

The Ugandan Anti-Homosexuality Bill

Study on how and to what extent the Bill violates human rights. How are homosexuality and the Bill perceived in Ugandan society?

Candidate number: 9004

Submission deadline: 15-05-2014

Number of words: 19.183

Master's thesis

Master of Philosophy in the Theory and Practice of Human Rights



Abstract

This thesis addresses the issue of the Anti-Homosexuality Bill, a Ugandan law that criminalizes homosexuality and punishes it with the harshest penalties.

The author analyzes the Bill through both a legal and a social perspective. He argues first that the Bill amounts to abuses of human rights and fundamental freedoms Uganda has committed itself to respect. In addition, the author studies how the Ugandan society perceives the Bill and homosexuality in general. He observes that there is a new wave of homophobia in the African country and elaborates several hypothesis to explain this fact.

The main purpose of the thesis is to understand the problematic aspect of an egregious piece of legislation and analyze the arguments of those Ugandans for whom homosexuality is something that goes against national culture as well as what influences their way of thinking.

Acknowledgments

This thesis is dedicated to all the members of the LGBT-community in Uganda. I look up to these people for being able to live openly as homosexuals even though their lives are at risk. I wish them the best of luck in the future.

I would like to thank all the Ugandans that have participated and given their testimonies in this thesis. An important part of this work would have been impossible to write without them.

I want to thank as well my supervisor Stener Ekern, Associate Professor at the Norwegian Centre for Human Rights, for his help and kindness.

Finally, I wish to express my gratitude too to the employees of the different NGOs I have been in contact with for the purposes of my research: Sandra Petersen (Executive Director of the Norwegian Human Rights Fund), Patricia Kaatee (Political Advisor for Amnesty International Norway), Marna Eide (Advisor in the International Department of LLH) and the staff of KIOS (The Finnish NGO Foundation for Human Rights). Thank you for all the information and contacts you have provided me with.

Abbreviations

LGBT – Lesbian, Gay, Bisexual and Transexual

UN – United Nations

NGO – Non-Governmental Organization

LLH – Norwegian Association for lesbians, gays, bisexuals and transgender people

KIOS - Finnish NGO Foundation for Human Rights

EHAHRDP - East and Horn of Africa Human Rights Defenders Project

GEHO - Gender Equality and Health Organization

UDHR – Universal Declaration of Human Rights

HIV - Human Immunodeficiency Virus

SMUG - Sexual Minorities Uganda

AIDS - Acquired Immune Deficiency Syndrome

ICESCR - The International Covenant on Economic, Social and Cultural Rights

ICCPR - The International Covenant on Civil and Political Rights

CAT - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

HRC – Human Rights Committee

HRD – Human Rights Defenders

AU – African Union

IT – Information Technology

UNICEF - The United Nations' Children's Fund

PRA - Political Research Associates

NPR - National Public Radio

JATT - Uganda's Joint Anti-Terrorism Task Force



Map 1: Africa (source: mapsofworld.com)



Map 2: Uganda (source: Click Afrique 2008)

Table of contents

1. INTRODUCTION.....	1
1.1. Research question and methodology.....	2
1.1.1. Interdisciplinary approach.....	5
1.1.2. Methodology and sources.....	6
1.1.3. Limitations of the study.....	6
1.1.4. A note on the sources.....	7
1.1.5. Organization of the thesis.....	7
 2. BACKGROUND.....	 8
2.1. Uganda.....	8
2.2. LGBT	9
2.3. The situation of the LGBT-community in Uganda	10
 3. THE ANTI-HOMOSEXUALITY BILL: CONTENT AND POSSIBLE EFFECTS.....	 13
3.1. The former legislation concerning Homosexuality.....	13

3.2.	Content of the 2013 Bill.....	15
3.2.1.	Homosexuality and related practices.....	15
3.2.2.	Related offences and penalties.....	17
3.2.3.	Other relevant provisions.....	18
3.3.	Possible effects of the Bill.....	20
4.	THE BILL IN A HUMAN RIGHTS PERSPECTIVE.....	23
4.1.	The unlawfulness of Clause 18	23
4.1.1.	The African Charter.....	24
4.1.2.	ICESCR.....	24
4.1.3.	ICCPR.....	26
4.1.4.	CAT.....	26
4.1.5.	The Constitution of Uganda.....	26
4.1.6.	The Vienna Convention.....	27
4.2.	The rights and freedoms the Bill violates.....	28
4.2.1	The principle of non-discrimination.....	28
4.2.2.	The right to life.....	29
4.2.3.	The right to privacy.....	30

4.2.4.	The right to health.....	31
4.2.5.	The right to liberty and security.....	31
4.2.6.	Freedom of Expression.....	32
4.2.7.	Freedoms of Assembly and Association.....	33
4.2.8.	Freedom of thought, conscience and religion.....	34
4.3.	The impact of the Bill on Human Rights Defenders.....	35
4.4.	Forced HIV-testing and the rights of people living with HIV and AIDS.....	36

5. THE UGANDAN SOCIETY. HOW ARE THE BILL AND HOMOSEXUALITY IN GENERAL PERCEIVED? CONCLUSIONS AND REFLECTIONS ON THE MOTHER OF THE NEWBORN HOMOPHOBIA 38

5.1.	The answers to the questionnaire.....	39
5.1.1	Why does a big part of the Ugandan population disapprove of homosexual behavior?.....	40
5.1.2.	Is the Homosexuality Bill a good idea?.....	41
5.1.3.	What does “human rights” mean?.....	42
5.1.4.	Does the Anti-Homosexuality Bill constitute a violation of human rights?.....	42
5.1.5.	Is homosexuality mentioned in churches and schools?.....	43

5.1.6.	Will the Bill contribute to a better society?.....	44
5.1.7.	Can homosexual behavior be considered a serious offence or a felony?.....	45
5.1.8.	Should homosexuality be punished, recognized in the law or nothing special should be done?.....	45
5.1.9.	Is a person born or induced homosexual?.....	45
5.1.10.	Conclusions and reflections.....	46
5.2.	Sub questions: reflections and hypothesis	49
5.2.1.	The power of American Evangelicals in Uganda. Are they the mother of the newborn homophobia?	51
5.2.2.	Traditional values in Uganda.....	56
5.2.3.	A strategy of the government?	58
5.2.4.	“Homosexuality has been imported and pushed by the West”.....	60
6. CONCLUSIONS.....		61
7. TABLE OF REFERENCES.....		63
Attachment 1 – Questionnaire.....		71
Attachment 2 – List of participants.....		72

Attachment 3 – Map. Countries where homosexuality is illegal.....	75
Attachment 4 – Map. Gay Rights in Africa.....	81

1. Introduction

Making a decision on what you are going to write a thesis about is not an easy task. In most cases, students struggle until they find a topic they feel identified with. I have not been an exception. I was not sure about what I wanted to focus on until, by chance, I watched a documentary released by BBC entitled “The World’s Worst Place to be Gay”. The documentary shocked me. A British journalist, openly gay and appreciative of his country’s gay rights, travelled to Uganda to compare the situation of homosexuals in both countries.

Uganda is an extremely homophobic country. As I went through the documentary, I could hear things like “In Africa, sodomy is an abomination”, “Homosexuals should be put to death” or “We can save lives by condemning homosexuals”.

After reading this, it should not come as a shock to find out that in Uganda, LGBT-people are tortured, imprisoned, beaten up and disowned only because of their sexual orientation. Most of them must go into hiding and live in slums where they barely survive because nobody will employ them. And why would not there be employment opportunities for most of them? Because some national magazines release the pictures and names of homosexuals they know of so that everyone can point at them and isolate them from the society (“Hang them”, wrote “The Rolling Stone” newspaper when it outed ten homosexuals on its front page). However, the most powerful bomb was just about to explode and now it has. The Ugandan Parliament passed a law proposal known as “the Anti-Homosexuality Bill” on 20 December, 2013. The Anti-Homosexuality Bill, also known as the Anti-Gay Bill or “Kill The Gays” Bill, has been one of the most commented issues in 2013. The Bill punishes homosexuality severely and puts obstacles to the work of Uganda-based people and institutions that try to protect the rights of the LGBT-community.

A lot of thoughts and questions invaded my head after finding out about this issue. I decided it could be a very interesting thesis topic and also a useful piece of work.

The testimonies I heard in the documentary showed a perception on homosexuality that was very difficult for me to understand. I grew up in Spain, a country where, even if homophobia exists, it does not affect the LGBT-community to an extent preventing its members from inte-

grating in the society. For this reason, I became very interested in finding out what is it that makes Ugandans dislike homosexuals so much.

I made some research to find out if homosexuals had been persecuted in the past and I did not find any evidence of violence. Something must then have awakened this new wave of homophobia. People do not wake up one day and decide, all together and the same time, to mobilize against a group. One thing is to consider that being homosexual is not natural and another thing is to pass a law that punishes homosexuality with the harshest penalties. This was, from my point of view, a clear expression of hate and I wondered what could be the reason for that hate.

Finally, I saw that Uganda had ratified certain international human rights treaties and that the national Constitution had human rights provisions. I then wondered why the country would support a Bill that so obviously violates the rights it has committed itself to respect.

All these reflections and hypothesis led me to select the Anti-Gay Bill as the topic of my master thesis.

1.1. Research question and methodology

In this thesis, I will address the issue of the Anti-Homosexuality Bill from a legal and a social perspective. This interdisciplinary approach will have two main focuses: firstly, I will analyze how and to what extent the Bill amounts to a violation of the human rights recognized in the international treaties acceded to by Uganda; secondly, I will write about how this legal text and homosexuality in general are perceived in the Ugandan society as well as how deep that perception is, when it started and by what means it has spread. Concerning this second focus, the following sub-questions come to the surface:

-The position that has officially been adopted by the Government is that homosexuality did not exist in Uganda until Western countries imported it. The current president of Uganda, Yoweri Museveni, in a meeting with America's Robert F Kennedy Centre for Justice and

Human Rights, defined gay people as “*deviants*” and accused European countries of trying to promote homosexuality and sexual liberalization. Museveni’s wife was also at that meeting and declared that: “*You (Westerners) have imposed on us enough of your bad practices, right from guns, and we shall not allow homosexuality in Uganda because the Bible forbids it*”.¹ However, some of the testimonies that I have collected declare that there have always been homosexuals in Uganda. Furthermore, in these settings a debate about whether a homosexual is born or induced is of great importance. It is my personal opinion that homosexuality is not an acquired behavior but something one is born with. Taking this into account, is there any way the West could have pushed it into the country?

-The second question concerns Uganda’s traditional values and culture. In the interviews that I have conducted, most Ugandans state that homosexuality goes against both religious teachings and national culture and that this is the reason why the population does not approve of it. Government and religious leaders back this affirmation. What I wonder here is: what do they mean by culture? A couple of possibilities come to the surface but my research makes me suspect that when Ugandans talk about culture they refer to religious family values, particularly to the fact that a man has to enter marriage with a woman and have children. However, I argue that, even though the religion-backed traditional family is the most common type of unions, culture in Uganda is not homogenous. There are tribes that maintain certain traditions that do not match with the traditional idea of a marriage. In addition, many Ugandans do not respect the institution of marriage in practice. Given these variations, I will support that homosexuals should not be considered a threat to national traditional values.

-The third sub question brings American Evangelicals into the picture. In 2009, missions of American Evangelicals started to land in Uganda. A campaign pro family values was initiated but turned soon into a crusade against LGBT-people. According to my findings, it was after the start of this campaign that the violence against the LGBT-community started. The way I have interpreted the testimonies, documentaries and articles I have had access to, it is my hy-

¹ Roberts, Scott. *Wife of Uganda’s president denies Anti-Homosexuality Bill is designed for persecuting gays*
<http://www.pinknews.co.uk/2013/04/01/wife-of-ugandas-president-denies-anti-homosexuality-bill-is-designed-for-persecuting-gays/>

pothesis that the Ugandan population are being brainwashed by American evangelicals, who have been spreading hate in conferences, seminars and schools. I want to clarify the term “brainwashing”, a term that can be vague because it has been used in different contexts. Brainwashing is defined as “an indoctrination process which results in "an impairment of autonomy, an inability to think independently, and a disruption of beliefs and affiliations. In this context, brainwashing refers to the involuntary reeducation of basic beliefs and values”.² The term was used for the first time by newspaperman Edward Hunter in a series of articles and books he wrote about certain methodologies of coercive persuasion used under the Maoist government in China. As the Palm Beach Post published in 2003, *"during the Korean War, American soldiers were subjected to prolonged interrogations by their captors, who often worked in relays and used the "good-cop, bad-cop" approach, alternating a brutal interrogator with a gentle one. The Chinese and Koreans were making valiant attempts to convert the captives to the communist way of thought"*.³ In the 1960s brainwashing started to be connected to religion. It was blamed for the fact that many American youths converted to religious beliefs that differed greatly from those of their families and friends, with whom they broke contact with in many cases.⁴ When I talk about brainwashing in Uganda I refer mostly to the religious context. I perceive that American Evangelicals use religion to influence people's minds to an extent making them think that homosexuality is evil. As a result, homophobia spreads in the society. This is only a hypothesis that I believe I can prove with the following argument: Religion is the pillar of most Ugandans' life (at least this is what my research has made me conclude). Ugandans listen to pastors when they talk and trust them. Religion is all over. As I will show later, American Evangelicals are aware of this fact and they seem to have taken advantage of it. I have collected conferences given by them that put homosexuality in a very disadvantaged position. In addition, their religious teachings are all over in Uganda: at

² Kowal, D. M. (2000). Brainwashing. In A. E. Kazdin (Ed.), *Encyclopedia of psychology*, Vol. 1 (pp. 463-464). American Psychological Association
<http://psycnet.apa.org/index.cfm?fa=search.displayRecord&uid=2004-12755-173>

³ Browning, Michael (2003-03-14). *"Was Kidnapped Utah Teen Brainwashed?"* Palm Beach Post (Palm Beach). ISSN 1528-5758

⁴ Bromley, David G. (1998). "Brainwashing". In William H. Swatos Jr. (Ed.). *Encyclopedia of Religion and Society*. Walnut Creek, CA: AltaMira. pp. 61–62. ISBN 978-0-7619-8956-1

the store, on the bus, on the streets ... Everywhere you go you will find missions of American Evangelicals. I will develop this argument later in the sections devoted to my research question.

-Finally, another arising sub-question is the interest of the government in the enactment of the Anti-Homosexuality Bill. My main argument in this case will be that the government has enacted the Bill because it wishes to get the population's minds off other problems in national society. In the last few years, there have been big demonstrations in Uganda against corruption and high prices. The government has also been accused of carrying out torture practices. But these issues are no longer what media talks about. The Anti-Homosexuality Bill is what fills media right now. Moreover, the population reacts positively when somebody rejects homosexuality and I will provide some examples of that. Finally and as I will show later, it is not the first time that the authorities of a country turn against a vulnerable group in order to clean up its reputation.

1.1.1. Interdisciplinary approach

The reason why I decided to analyze the Anti-Homosexuality Bill not only from a strict legal perspective but also through the eyes of the society is that I find essential to study and understand people's minds before trying to understand the laws governing them. From my point of view, an analysis of a certain law without looking at the society could end up being simple and shallow. Moreover, in this thesis I am not only describing the Ugandan Bill as it is but I am also evaluating it, so all the more reason to study the population in order to come up with richer conclusions, arguments and hypothesis.

1.1.2. Methodology and sources

The sources that I have used range from testimonies of Ugandan people to articles and documentaries on the issue. I have also resorted to legislation as well as general comments and reports from treaty and United Nations (UN) bodies to carry out my legal analysis.

As for the methodology, in the legal part I will first go through the provisions of the Bill and demonstrate how it violates human rights by looking at the national Constitution and the treaties and conventions Uganda is bound to. I will strengthen my arguments with general comments and reports drafted by commissions, treaty committees and other UN bodies. As for the social science part, I will analyze the testimonies of the Ugandans who agreed to participate in this project and discuss the common perceptions of homosexuality, human rights and the Anti-Gay Bill among Ugandans. I will build my hypothesis on the different sub questions by way of interpreting these testimonies along with the evidence that I have collected through my own independent research.

1.1.3. Limitations of the study

The main limitation that I have faced during my investigation process is the fact that I have not been able to travel to Uganda to do field work. However, I have conducted a series of interviews with Ugandans who live in Norway, the country where I have resided in during the writing process. I also prepared a questionnaire related to the topic that has been answered by 13 Ugandans. Some of the interviewees refused to give their names on the grounds of fear although the majority agreed to give their initials.

1.1.4. A note on the sources

I have not followed any special criteria to select the interviewees. Since I could not travel to the African country, I could only contact Ugandans I was referred to by employees of different NGOs I have collaborated with, particularly Amnesty International Norway, LLH, the Norwegian Human Rights Fund and the Finnish NGO Foundation for Human Rights (KIOS).

1.1.5. Organization of the thesis

I have divided my thesis into four sections:

1. The first section will be devoted to explaining the concept of LGBT and presenting the current situation of the LGBT-community in Uganda. I will also give a few remarks on Uganda as a country.
2. The second section will show the content of the Anti-Homosexuality Bill and include an analysis of its possible effects. I will also mention the provisions of the Penal Code that criminalize homosexuality.
3. The third section is a legal assessment of the human rights and freedoms the Ugandan act violates and the legislation it is infringing.
4. The perceptions of the Ugandan society concerning the Bill, homosexuality and human rights will be covered in the fourth section. I will also explain in this section my hypothesis concerning the four research sub questions.

2. Background

2.1. Uganda

Uganda lies astride the Equator in Eastern Africa. It is bordered by South Sudan to the North, Kenya to the East, Congo to the West and Tanzania and Rwanda to the South. It is made up of four regions (Central, Eastern, Northern and Western) and its capital is Kampala.

Uganda has more than 31 million inhabitants and religion plays an important part of daily life. Most people follow the Catholic and the Anglican religions (41% and 40% of the population respectively). Around 10% are Muslims, a legacy of the Arab traders of the 19th century.

The state is a sovereign democracy governed by the 1995 Constitution. The President is the Head of both the State and the Executive and only those above 18 years of age are entitled to vote.

In 1894, Uganda was placed under a British protectorate, from which it was granted independence in 1962.⁵ When the British arrived in Uganda, there were over thirty ethnic and cultural groups that spoke different languages. In the last decades, colonialism, education, easy transport and urbanization have unified the population and made it more difficult to differentiate individuals by ethnic origin. Nowadays two big groups can be identified in Uganda according to language and culture:

-The Bantu: Living mostly in the South. The largest group (around a fifth of the population) is the Baganda, who live in the Kampala region and speak Luganda.

-The Nilotics: living mostly in Northern and Eastern Uganda.⁶

⁵ Information available at <http://www.visituganda.com/about-uganda/>

⁶ Prime Uganda Safaris, 2012. People & Cultures of Uganda

Uganda is a member of the African Union (AU), established through the adoption of the Constitutive Act in the Lome Summit in Togo on 11 July, 2000. Article 3 (h) of this Act provides that one of the main objectives of the Union is to “*promote and protect humans and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments*”. The Charter this article talks about was adopted June 27, 1981 and entered into force 21 October, 1986. Africa has a Commission, the African Commission, which is in charge of implementing the Charter and a Court, the African Court of Justice and Human Rights, which has contentious and advisory jurisdiction on human rights issues.⁷

2.2. LGBT

LGBT stands for lesbian, gay, bisexual and transgender and, along with heterosexual, it describes people's sexual orientation or gender identity.

Sexual orientation refers to a pattern of emotional, romantic, and/or sexual attractions to men, women or both. It also refers to a person's sense of identity based on those attractions. Three sexual orientations are commonly recognized: heterosexual, homosexual and bisexual. A homosexual man is one who is romantically, sexually and/or emotionally attracted to men. A homosexual woman is one who is romantically, sexually and/or emotionally attracted to women. A bisexual person is someone who is romantically, sexually and/or emotionally attracted to both sexes.

Gender identity refers to whether one feels male, female or transgender regardless of one's biological sex. Within transgender, we must distinguish between: a) Transsexual people, who are those who live or wish to live as members of the gender other than that assigned at birth. The process of transitioning from one gender to another is called gender reassignment.

<http://www.primeugandasafaris.com/uganda/people-cultures-of-uganda.html>

⁷ Javid Rehman, *International Human Rights Law* (Pearson, 2nd ed., 2010), pp. 306, 308, 309, 328 and 332

b) Transvestite or cross-dressing individuals, who are fine with their gender but wear clothes considered appropriate to a different gender.

Finally, we call homophobia the hatred, prejudice and/or discrimination against lesbian, gay and bisexual people as well as the dislike of same-sex attraction and love. Transphobia refers to hatred, prejudice and/or discrimination against people who are transsexuals.⁸

2.3. The situation of the LGBT-community in Uganda

Homosexuality is illegal in 83 countries on the planet. 38 of those countries are African (see Attachments 3 and 4). In a report entitled "Making Love a Crime: Criminalization of same-sex conduct in sub-Saharan Africa", Amnesty International highlights that in the last five years African countries such as South Sudan, Liberia, Uganda and Nigeria have introduced new laws criminalizing same-sex relations. In Nigeria, a new law was recently passed by the Parliament and signed by the president, Goodluck Jonathan. This law punishes gay marriage with up to fourteen years in jail and membership or encouragement of gay clubs, societies and organizations with up to ten years.⁹ In Uganda, the situation for the LGBT-community is extremely difficult. Love and sex between two persons of the same gender are criminalized and, consequently, homosexuals are constantly discriminated against and persecuted. Amnesty International has many times documented cases of people who have been tortured, arrested and imprisoned solely because of their sexual orientation.¹⁰ Harassment and violence on the

⁸ LGBT Helpline. *What Is LGBT?*

<http://www.lgbt.ie/information.aspx?contentid=84>

⁹ BBC, 2013. 25.06.2013. *Amnesty International condemns 'homophobia' in Africa*

<http://www.bbc.co.uk/news/world-africa-23033423>.

¹⁰ Amnesty International Norway, 2012. Holst-Pedersen Kvam, Ina. 22. 06.2012. *Farlig for homofile i Uganda*

<http://www.amnesty.no/aktuelt/flere-nyheter/farlig-homofile-i-uganda>

part of government officials and the society are also a part of the LGBT-community's daily life. Their members are often kicked out of their homes, their offices get ransacked and razed and they are accused of molesting children and recruiting people into becoming homosexuals.

¹¹ During this thesis, I will give many examples that evidence the national attitude towards LGBT. For instance, in June 2012, the Ugandan police raided a human rights conference organized in a hotel in Kampala by East and Horn of Africa Human Rights Defenders Project (EHAHRDP) to raise awareness on LGBT rights. The police, without any valid justification, threatened the people who were taking part in the conference, forced them to abandon the hotel and arrested many of them.¹²

Ugandan gay rights activist Andrew Waiswa is the founder and executive director of Gender Equality and Health Organization (GEHO), a queer organization in Uganda. He provides accommodation (the so-called safe houses) and support for gay people who must live in hiding. He admitted to be overwhelmed by the increasing number of people asking for his help. *"I set up the safe houses because I could not stand the pain of being picked up by the police, thrown in a cell, questioned and treated badly. Most people just hang themselves or take poison or commit suicide"*. Waiswa left Uganda one year after the release of the Anti-Homosexuality Bill. The young activist declares that *"Things got so hot. The bill has forced several of our LGBT members into hiding. Some have been chased out of their families, banished from their clans, thrown out by their landlords or workplaces"*.¹³

¹¹ Amnesty International Norway, 2012. Jensen, Martine Hoff, 04.12.2012. *Uganda: Stopp dødsstraff for homofili!*

<http://www.amnesty.no/aksjon/flere-aksjoner/uganda-stopp-d%C3%B8dsstraff-homofili>

¹² *ibid* ... above 10

¹³ Houston, Andrea, 14.02.2013. *Indomitable activist*

http://www.xtra.ca/public/National/Indomitable_activist-13165.aspx

The 2013 Anti-Gay Bill became publicly known for the first time in September 2009 and has ever since been debated and voted many times but never became national law. The proposal seemed to have been forgotten when, in late 2012, Rebecca Kadaga, spokeswoman of the Ugandan Parliament, paid an official visit to Canada. At some point, she was asked about the bill by John Baird, the Canadian Minister of Foreign Affairs. Kadaga liked neither the question nor the tone Baird employed and she called him arrogant and accused him of promoting homosexuality. When Kadaga landed in Uganda, she was received as a hero and promised that the bill would be discussed and voted over in the Parliament before 2013.¹⁴ This detail tells us how positively Ugandans react when somebody speaks out publicly against homosexuality. However, the law proposal got stuck and remained silent for nearly one year until it was passed on 20 December, 2013. The Ugandan President assented to the Bill on 24 February, 2014. The Bill is now national law.¹⁵

But what is the content of this Bill? What does it add to the current national legislation? The next section presents those provisions of the Bill that describe the acts that are criminalized and the corresponding penalties.

¹⁴ Amnesty International Norway, 2012. Jensen, Martine Hoff, 30.11.2012. *Kan stå om livet for homofile i Uganda*

<http://www.amnesty.no/ikke-publisert/kan-st%C3%A5-om-livet-homofile-i-uganda>

¹⁵ BBC, 2013. 20.12.2013. *Ugandan MPs pass life in jail anti-homosexual law*
<http://www.bbc.co.uk/news/world-africa-25463942>

BBC, 2014. 24.02.2014. Ugandan President Yoweri Museveni signs anti-gay bill
<http://www.bbc.com/news/world-africa-26320102>

3. The Anti-Homosexuality Bill: content and possible effects

3.1. The former legislation concerning Homosexuality

Homosexuality has for many years been forbidden in Uganda. The Ugandan Penal Code from 1950 prohibits (indirectly, by calling it unnatural carnal knowledge) consensual sex between individuals of the same sex and punishes it with life imprisonment. Articles 145-147 of the Code reads as follows:

145. “Unnatural offences.

Any person who:

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life”

146. “Attempt to commit unnatural offences.

Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years”

147. “Indecent assaults on boys under eighteen.

Any person who unlawfully and indecently assaults a boy under the age of eighteen years

commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment”.¹⁶

Article 145 is quite unclear. Its indistinct language derives from the British common law system and refers to sodomy. The provision does not distinguish between homosexual and heterosexual sodomy but in practice only homosexual sodomy is criminalized.¹⁷ As for Article 147, it is not clear either but if we take into account the two previous articles there are reasons enough to suspect that it refers to same sex intercourse. I find Article 147 meaningless because it makes a distinction between decent and indecent sexual assault and my question is: is there a decent sexual assault? A sexual assault is indecent *per se* no matter the circumstances because it goes against the victim's right to be free from inhuman or degrading treatment, a right recognized in Article 5 of the Universal Declaration of Human Rights (UDHR). Is the article implying that when a heterosexual commits the assault it is not indecent? If this is the case, the article would be discriminatory and it would pave the way for sexual assaults by heterosexuals who would not be condemned based on that article.

¹⁶ Uganda Penal Code Act 1950.

<http://www.ulii.org/ug/legislation/consolidated-act/120>

¹⁷ Michael Hollander, *Gay Rights in Uganda: Seeking to Overturn Uganda's Anti-Sodomy Laws*, 50 Va. J. Int'l L. at 220 n.2 and 259 (2009)

3.2. Content of the 2013 Bill.¹⁸

3.2.1. Homosexuality and related practices

The Anti-Homosexuality Bill strengthens the provisions of the Penal Code. It is divided into five parts and has 19 clauses. It seems like the Parliament slightly modified the Act before passing it in December 2013. These modifications include a removal of the death penalty provision that the original Bill contained. Nonetheless, no new version of the Bill had officially been made public by the start of my writing and for this reason I will analyze the content of the original proposal. I also think that it is more interesting to study the proposal as it was originally drafted, because this is the document the media and the population worldwide debated.

The author of Uganda's Anti-Homosexuality Bill was David Bahati, Ugandan politician and member of the Ugandan parliament. Bahati described the proposal the following way: *"The bill basically has four components. The first component is to outlaw homosexuality. The second component is about the emerging issues within homosexuality we have seen over time, including the promotion of it. The bill also concentrates on the inducement of children. There is no law that stops same-sex marriage, so we want to outlaw and prohibit it and see rehabilitation and counselling for the victims of this grave, evil practice"*.¹⁹

¹⁸ Bill n.18. The Anti-Homosexuality Bill, 2009. Bills supplement to the Uganda gazette No. 47 Volume CII dated 25th September 2009.

<http://wp.patheos.com.s3.amazonaws.com/blogs/warrenthrockmorton/files/2014/01/The-anti-homosexuality-bill-2009-2013.pdf>

¹⁹ Adams, Rachel. 13.12.2012. *I Spoke to the Author of Uganda's Anti-Homosexuality Bill*
<http://www.vice.com/read/an-interview-with-the-author-of-ugandas-anti-homosexuality-bill>

The first clause of the proposal is an interpretation clause devoted to defining the most relevant concepts it talks about like “serial offender”, “sexual act”, “bisexual” and “homosexual”, among others. For example, a “serial offender” is defined as *“a person who has previous convictions of the offence of homosexuality or related offences”*. I find also important in order to understand the scope of the Bill to know how it defines “sexual act”. Sexual act would cover the following behaviors:

- a) *“Physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another's breast, vagina, penis or anus*
- b) *Stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ*
- c) *The unlawful use of any object or organ by a person on another person's sexual organ or anus or mouth”*

As we can see, the scope of the legal text is wide making it easy to accuse a person of committing the offence the Bill defines.

Clause 2 of the Bill criminalizes what the Act calls “the offence of homosexuality”, which is defined as *“the engagement in consensual sex with someone of the same sex as well as the intention of committing the act of homosexuality”*. As we can see, the law punishes not only the act but also the intention. But how do we find out that a person has the intention of having sex? The biggest problem here is that, since the act is very recent, there is no case law on what kinds of behaviors can be considered as “intention of committing the act of homosexuality”. Could I sue a Ugandan citizen because he has been staring at me in a bar?

Although the Bill focuses mostly on homosexuality, it also refers to gender identity on clause 18, which states that *“definitions of ... gender identity shall not be used in any way to legitimize homosexuality, gender identity disorders and related practices in Uganda”*. Taking into account the binary definition of “gender” set down in the bill (*“gender means male or female”*), transgender individuals would also be criminalized irrespective of their sexual orientation.

Clause 3 gives rise to the felony called “aggravated homosexuality”, which is punished in the Bill with death penalty. “Aggravated homosexuality” occurs when:

- the person against whom the offence is committed is below the age of 18 years
- the offender is a person living with HIV
- the offender is a parent or guardian of the person against whom the offence is committed
- the offender is a person in authority over the person against whom the offence is committed
- the victim of the offence is a person with disability
- the offender is a serial offender
- the offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy, overpower him or her so as to thereby enable any person to have unlawful carnal connection with any person of the same sex.

Finally, clause 4 punishes also, with seven years in prison, the attempt to engage in the behavior described in Clause 2, and with life imprisonment in case of attempt of committing the aggravated felony described in the previous clause.

3.2.2. Related offences and penalties

Clauses 7 to 14 address what the Bill calls “Related offences and penalties”.

Clauses 7 and 8 punish with seven years of imprisonment any person who aids, abets, counsels or procures another to engage in homosexuality or who conspires with another to induce somebody into homosexuality, respectively.

Clause 10 criminalizes the detention with intent to commit homosexuality and Clause 11 states that *“a person who keeps a house, room or place of any kind for purposes of homosexuality commits an offence and is liable on conviction to imprisonment for seven years”*.

Clause 12 imposes the penalty of life imprisonment to those who *“purport to contract”* a same sex marriage.

Clause 13 punishes the so-called “promotion of homosexuality”. The activities that would give rise to this promotion are, according to the Bill, the following:

- a) Participating in production, procuring, marketing, broadcasting, disseminating, publishing pornographic materials for purposes of promoting homosexuality
- b) Funding or sponsoring homosexuality or other related activities
- c) The offer of premises or other related assets for purposes of homosexuality or promoting homosexuality
- d) The use of electronic devices which include internet, films and mobile phones for purposes of homosexuality or promoting homosexuality
- e) Acting as an accomplice or attempts to promote homosexuality and related practices.

The promotion is punished with a fine of five thousand currency points or with imprisonment of a minimum of five years and a maximum of seven years or with both fine and imprisonment. If the offender is a corporate body, business, association or non-governmental organization, its certificate of registration will be cancelled and the director, proprietor or promoter will be sentenced to seven years of imprisonment.

Finally, Clause 14 criminalizes the failure of any Ugandan to report within 24 hours a breach of the content of the proposal. It would then be mandatory for all Ugandans to report LGBT-people they know of. The punishment for not complying with this provision is deprivation of liberty up to three years.

3.2.3. Other relevant provisions

To conclude with the content, I would like to mention two more provisions that I consider especially egregious.

Clause 16 relates to extra-territorial jurisdiction. It confers authority to arrest and charge an Ugandan citizen or permanent resident who engages in homosexual activities outside the borders of Uganda. The clause says: *“This Act shall apply to offences committed outside Uganda where: a) a person who, while being a citizen of or permanently residing in Uganda, commits an act outside Uganda, which act would constitute an offence under this Act had it been committed in Uganda, or b) the offence was committed partly outside or partly inside Uganda”*. Therefore, according to this provision, any Ugandan or person residing in Uganda can be charged with the crime of homosexuality even if he or she is outside the country the moment he or she carries out one of the acts criminalized by the Anti-Gay Bill. The general rule, according to article 4.1 of the Ugandan Penal Code, is that the jurisdiction of the courts extends to every place within Uganda. However, article 4.2 says *“(2) Notwithstanding subsection (1), the courts of Uganda shall have jurisdiction to try offences created under sections 23, 24, 25, 26, 27 and 28 committed outside Uganda by a Uganda citizen or person ordinarily resident in Uganda”*. These sections refer to:

23. Treason and offences against the State.

24. Penalty for acts intended to alarm, annoy or ridicule the President

25. Concealment of treason.

26. Terrorism.

27. Promoting war on chiefs, etc.

28. Time within which to commence prosecution.

As we can see, homosexuality is being treated as if it was as serious as terrorism or crimes against the president and the state. It has been elevated to a level that justifies an exception to the general rule concerning the jurisdiction of the Courts. This detail shows us how lawmakers and authorities perceive homosexuality (or how they want the population to perceive it)

Finally, Clause 18 (1) declares null and void any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in the Bill. This provision is unlawful due to the obligations Uganda has committed itself to abide by upon accession to certain human rights treaties.

3.3. Possible effects of the Bill

A lot has been said about the possible effects of the Anti-Homosexuality Bill. Gerald Sentongo, former leader of Sexual Minorities Uganda (SMUG), stated that *“If the law is enacted the situation for the LGBT-community will get a lot worse. Many LGBT-people will be arrested. The police know some of them already, so it will be very dangerous for them to be out in the streets. Moreover, it will be very difficult (for people) to cope with HIV and AIDs. Right now everyone can go to the hospital and get tested for sexually-transmitted diseases. This will be impossible if the law is passed”*.²⁰ I cannot help but worry. Taking into account that the situation for LGBT-people in Uganda is extremely tough now, what is it going to happen if it gets worse? What else can happen that has not happened already? In January, 2011, David Kato, LGBT-rights activist, died on the way to the hospital after being brutally beaten at his place in Kampala. The murder of Kato was facilitated by the newspaper “Rolling Stone”, which in October, 2010, published under the headline “Hang them” a list of homosexuals living in Uganda with their names and pictures on the cover.²¹ As we can see, violations of the most fundamental human right, the right to life, occurred even when the Bill was still a proposal.

In Nigeria, dozens of gay men were arrested after the enactment of the new law that makes same-sex marriage and membership or support of gay organizations, associations or clubs a crime.²² In March, 2014, five gay Nigerian men were detained, stripped naked and beaten in public after being reported by a sexual partner who was blackmailing them.²³ In the same

²⁰ Amnesty International Norway, 2013. Bakken, Ingrid Linde. 20.02.2013. *LHBT-aktivist i Uganda: Frykten er verst*. <http://www.amnesty.no/ikke-publisert/lhbt-aktivist-i-uganda-%E2%80%93-frykten-er-verst>

²¹ Amnesty International, 2011. Hald, Merete. 27.01.2011. *Homoaktivist brutalt myrdet i Uganda*. <http://www.amnesty.no/aktuelt/flere-nyheter/uganda>

²² The telegraph, 2014. Debusmann, Bernd. 14.01.2014. *Dozens of men arrested for being gay after Nigeria quietly passes homosexuality legislation*. <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10571660/Dozens-arrested-after-anti-gay-law-passed-in-Nigeria.html>

²³ Zapata, Jean Paul. 31.03.2014 *Gay Nigerians stripped naked and whipped in public after sex party*.

month, another four Nigerian men received 20 lashes each after an Islamic court in the northern city of Bauchi convicted them of gay sex.²⁴ Violence against the Nigerian LGBT-community has become part of daily life. According to some witnesses, in February, 2014, a mob attacked some young gay men in a neighborhood in Abuja, the capital of Nigeria, beating them with nail-studded clubs and whips. Afterward, four of the victims were dragged to the police station where they continued to be beaten and insulted by police officers.²⁵ Nigeria is a good example of what could happen in Uganda in the future.

Asma Jahanghir, former Special Rapporteur on extrajudicial executions, made a comment which I consider worth highlighting. She declared that *“The criminalization of matters of sexual orientation increases the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity”*.²⁶ I completely agree with her. When a certain act is criminalized many people get scared because not all of them have the capacity or the will to think and analyze whether the act is right or wrong, they just follow the rules. The particular effect in Uganda may then be that many will start considering homosexuality a criminal act and this will render the fight for equality extremely difficult.

Another scholar, Sylvia Tamale, addresses the social implications that the Bill can have. In her opinion, since homosexuality is defined in such a broad way in the Bill (as to include “touching another person with the intention of committing the act of homosexuality”) all citizens (homosexuals and heterosexuals) will get affected. I think she is right if we acknowledge that now anyone can bring false accusations against others just to damage them like it happened in 2009 with Pastor Robert Kayanja. Kayanja worked for the Miracle Centre Cathedral

<http://www.gaystarnews.com/article/gay-nigerians-stripped-naked-and-whipped-public-after-sex-party310314>

²⁴ BBC News Africa, 2014. 06.03.2014. *Nigeria gays: 20 lashes for 'homosexual offences'*.
<http://www.bbc.com/news/world-africa-26469501>

²⁵ Nossiter, Adam. 15.02.2014. *Mob Attacks More Than a Dozen Gay Men in Nigeria's Capital*
http://www.nytimes.com/2014/02/16/world/africa/mob-attacks-gay-men-in-nigerias-capital.html?_r=1

²⁶ Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, E/CN.4/2001/9, 11 January 2001, para.50.

of Kampala and was accused of sexually abusing two teenagers. The complaints were withdrawn but it was later discovered that other pastors had assisted the teenagers in filing their complaints. According to some Kayanja's supporters, the aim of the pastors who helped bring out the accusations was to damage Kayanja's reputation before the visit of American preacher Benny Hinn.²⁷

As for the provision that obliges to report "the offender" within 24 hours, it can have, as Tamale highlights, devastating consequences for families. Compliance with this clause obliges a relative to report another relative if the former knows that the latter has engaged in homosexual behavior. In addition, if we think about it, the same rifts and conflicts will appear between friends, doctors and patients, teachers and students and so on. Dr. Stella Alamo Talisuna, Executive Director of "Reach Out", a Catholic organization that aims to curb the spread of HIV infection among less privileged members of the society, expressed that *"As health workers, we have our own ethical codes, which are so, so old. They bind us to confidentiality. The bill will conflict with these existing codes. Bahati needs to understand the magnitude of the issue."*²⁸

Finally, the law will have very negative effects for international organizations and NGOs fighting for human rights as well because they will not be able to work freely since Clause 13 seeks to silence any kind of activism, advocacy, education or training that is likely to promote homosexuality.

²⁷ Tamale, Sylvia. *A Human Rights Impact Assessment of the Ugandan Anti-homosexuality Bill 2009*, p.5.
<http://www.equalrightstrust.org/ertdocumentbank/Sylvia.pdf>. pp.52 and 57

²⁸ Ibid ... above 19

4. The Bill in a human rights perspective

In this section, I discuss the Anti-Homosexuality Bill from a legal perspective. This includes an analysis of the human rights and freedoms the Act violates in view of the treaties Uganda is a party to.

4.1. The unlawfulness of Clause 18

The first controversy that comes up in terms of human rights compliance concerns Clause 18 of the Bill. This clause nullifies any international treaty, protocol, declaration or convention that is contradictory to the spirit and provisions of the Act. This provision is unlawful because it goes against four pieces of legislation Uganda has acceded to:

- The African Charter on Human and Peoples' Rights
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Clause 18 clashes also with the national Constitution and the Vienna Convention on the Law of Treaties. Uganda is not a party to this Convention but as Amnesty International declared in its 2010 report on the Anti-Homosexuality Bill, it must however respect certain provisions of the Convention that are considered a part of International Customary Law.²⁹

²⁹ Amnesty International 2010. Uganda: Anti-Homosexuality Bill is Inherently Discriminatory and Threatens Broader Human Rights. 07.01.2010. AFR 59/003/2010.

4.1.1. The African Charter

Uganda ratified this Charter in 1986 and Clause 18 is not in conformity with articles 1 and 2 thereof. Article 1 of the Charter states that the Member States of the Organization of African Unity that are parties to the Charter undertake to adopt legislative or other measures to give effect to the rights and freedoms recognized therein. As for Article 2, it establishes the principle of non-discrimination of any kind in the enjoyment of those rights and freedoms. As I will explain later, the Bill violates some of the rights recognized in the Charter as well as the principle of non-discrimination. Consequently, Uganda is not giving effect to the content of the Charter within the meaning of Article 1.

4.1.2. ICESCR

Uganda acceded to this Convention in 1987 and violates it through Clause 18 in the following way:

Article 2 of the Covenant says:

“1. Each State Party to the present Covenant undertakes to take steps (...) with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

<http://www.amnesty.org/en/library/asset/AFR59/003/2010/en/befd26d0-8051-469b-af76-b76858c423ff/afr590032010en.pdf>

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind (...)

Article 4 of the Covenant declares:

“The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”

The Bill violates some of the rights recognized in this Convention. As we can see, Uganda committed itself upon accession to take steps to implement the convention and can only subject its rights and freedoms to limitations when it is necessary for the general welfare. Many Ugandans think that homosexuality is an illness or an evil practice and for this reason some might resort to the protection of general welfare as a justification for LGBT-persecution. They would probably reproduce Bahati's words *“we want to avoid the inducement of children”*.³⁰ But what do we mean by general welfare and what happens to the general welfare of LGBT-people? Is it fair to be imprisoned or even killed just for being the way you are? Is it reasonable to be expelled from school, fired from your job or isolated from your family just because you feel attracted to people of the same sex? We would have to look at case law in order to build a definition of general welfare but that is not the purpose of this thesis. In any case, a limitation based on general welfare has to be compatible with the rights of the Covenant and it is very clear that this is not the case in Uganda because homosexuals are not benefiting from it. Consequently, if a Ugandan resorted to general welfare in order to justify a limitation on the rights of homosexuals, that limitation would not be lawful.

³⁰ Ibid ... Above 19

4.1.3. ICCPR

Uganda became party to the ICCPR through accession in 1995 and some of the rights of this convention are compromised too by the Bill. As it can be implied by Article 2 of the convention, states parties are responsible for respecting, ensuring and taking the necessary steps to guarantee the rights recognized therein without discrimination. Moreover, this article highlights the obligation of states to “*adopt such laws (...) as may be necessary to give effect to the rights recognized (...)*”.

4.1.4. CAT

Uganda acceded in 1986 to the CAT and must comply with its Article 2, which points out that
“1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”

I have shown earlier documented cases of torture and ill-treatment towards the LGBT-community in Uganda. This means that the CAT was already being violated before the Anti-Homosexuality Bill being part of national laws.

4.1.5. The Constitution of Uganda

The Constitution of Uganda declares in article 287 that the country does not relinquish its international obligations arising from the treaties Uganda became a party to prior to the passing of the 2005 Constitution.

Article 287:

“Where—

(a) any treaty, agreement or convention with any country or international organization was made or affirmed by Uganda or the Government on or after the ninth day of October, 1962, and was still in force immediately before the coming into force of this Constitution; or

*(b) Uganda or the Government was otherwise a party immediately before the coming into force of this Constitution to any such treaty, agreement or convention, the treaty, agreement or convention shall not be affected by the coming into force of this Constitution; and Uganda or the Government, as the case may be, shall continue to be a party to it”.*³¹

4.1.6. The Vienna Convention

Uganda has never become party to the Vienna Convention on the Law of treaties but this Convention has certain provisions that are considered as part of International Customary Law. Article 38.1(b) of the Statute of the International Court of Justice, which lists the sources of International Law, defines international custom (also known as International Customary Law) “*as evidence of a general practice accepted as law*”. Therefore, International custom is born as a result of the combination of two elements: state practice and the acceptance of such practice as law. Concerning the first requisite, the practice must be constant and uniform on the part of most states. That was the interpretation of the International Court of Justice in the Asylum Case (Colombia v. Peru).³² As for the second requisite, it is known as “*opinio iuris*” and involves that most states must feel that a certain action or omission is required by law. Once

³¹ CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995.

http://www.parliament.go.ug/new/images/stories/constitution/Constitution_of_Uganda_1995.pdf

³² Judgement 20 November 1950, (1950) ICJ Reports 266

international custom is formed, all states are bound by it even if they did not contribute to its formation.³³ As it is argued by the 2010 report from Amnesty International, Uganda is violating articles 26 and 27 of the Vienna Convention because these articles have given rise throughout the years to the formation of International Customary Law and thus bind all states, parties and non-parties. Article 26 establishes the principle of “*Pacta sunt servanda*” (“*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*”). As for article 27, it points out that “*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*”. Consequently, not only is Uganda violating some treaties it is a party to but it is also justifying the non-compliance by resorting to national law.³⁴

4.2. The rights and freedoms the Bill violates

4.2.1 The principle of non-discrimination

Clause 2 criminalizes consensual same-sex conduct and, by doing that, it is violating the principle of non-discrimination recognized in Article 5 of the national Constitution, which says:

(1) “All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability”

³³ Javaid Rehman ... above 7 p.22.

³⁴ Remember that the Bill has its roots in the Penal Code, which already punishes same sex intercourse

(...)

The principle is also enshrined in Article 2 of the African Charter, the ICCPR and the ICESCR. The Human Rights Committee, the UN body in charge of monitoring states' compliance with the ICCPR, confirmed that sexual orientation is a ground of discrimination under the provisions of the Covenant.³⁵

In the same line, the African Commission on Human and Peoples' Rights, which monitors states' compliance with the African Charter, highlighted the importance of non-discrimination and declared that the principle translates into "*equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation*".³⁶

4.2.2. The right to life

Clause 3 punishes the offence of "aggravated homosexuality" with death penalty, something that goes against the right to life. This right is recognized in the Constitution of Uganda in Article 22. It is also protected by Article 6 of the ICCPR, which states that "*1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. (...)*"

³⁵ UN Human Rights Committee, Communication No. 488/1992: Australia. CCPR/C/50/D/488/1992, 4 April 1994 (Toonen v Australia). Paragraph 8.7

³⁶ African Commission on Human and Peoples' Rights, twenty first activity report, EX.CL/322 (X). Communication 245/2002 – Zimbabwe Human Rights NGO Forum/Zimbabwe. Paragraph 169

According to the Human Rights Committee (HRC), the expression “*most serious crimes*” must be read restrictively to mean that the death penalty should be a quite exceptional measure”.³⁷

The right to life of LGBT-people was already violated several times before the Bill came into force. A clear example is the murder of David Kato that I described in section 3.3.1.

4.2.3. The right to privacy

The right to privacy is affected by Clause 14 which introduces the crime of “failure to disclose the offence” of homosexuality within 24 hours. The Constitution of Uganda contains this right in Article 27:

(1) “No person shall be subjected to—(a) unlawful search of the person, home or other property of that person; or (b) unlawful entry by others of the premises of that person.

(2) No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property”

From my point of view, the right to privacy is violated in the way it was described by the HRC in *Toonen v Australia*, where it was established that “*adult consensual activity in private is covered by the concept of ‘privacy’*”.³⁸ As I argued concerning the right to life, the privacy of LGBT-people in Uganda has been constantly violated before the Bill became national legislation. As I mentioned in previous sections, police officers constantly raid the homes and offices of homosexuals and some national magazines publish their names and faces. The right to privacy is also protected by Article 17 of the ICCPR.

³⁷ Human Rights Committee, General Comment No. 6 (1982). Paragraph 7

³⁸ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994). Paragraph 8.2

4.2.4. The right to health

Clause 7, which condemn “aiding and abating homosexuality”, and 13, which lists a series of activities amounting to the offence called “promotion of homosexuality”, could have a very negative impact on the right to health, particularly on the availability, accessibility and quality of health services for LGBT-people. Uganda committed itself to respect the right to health when it became party to the African Charter, whose article 16 points out that “*every individual shall have the right to enjoy the best attainable state of physical and mental health. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick*”. This right is also recognized by article 12 of the ICESCR. When I talked about the social implications that the Bill could have, I mentioned that rifts were likely to appear between doctors and patients because according to the Bill a doctor would have the obligation to report a homosexual patient, thus breaching the confidentiality duty. For example HIV and AIDS are often defined as a “gay illness” due to the fact that its transmission is easier with the practice of anal sex. For this reason, many people living with it would not go to the hospitals to get treatment for the fear of being accused of being homosexuals. At the same time, any effort made by schools or organizations to raise awareness on HIV issues could be considered as “promotion of homosexuality”. This would be like a vicious circle because the less people know about HIV the more those living with it will be stigmatized.

4.2.5. The right to liberty and security

Article 9.1 of the ICCPR says that “*Everyone has the right to liberty and security. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law*”. The prohibition exists also in the African Charter (article 6) and in the Constitution of Uganda (article 23). Unjustified or arbitrary detentions are then forbidden in International Law. I agree with the opinion of the UN Working Group on Arbitrary Detention, which said that the deten-

tion and prosecution of individuals “*on account of their homosexuality*” is arbitrary because it violates the ICCPR’s guarantees of “*equality before the law and the right to equal legal protection against all forms of discrimination, including that based on sex.*”³⁹

4.2.6. Freedom of Expression

The criminalization of the promotion of homosexuality is an attack on the freedom of expression of NGOs that advocate LGBT-rights.

Freedom of expression is protected in Article 19 of the ICCPR:

1. “*Everyone shall have the right to hold opinions without interference.*”
2. “*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*”

Section 3 of Article 19 allows for limitations to this freedom but they must be “*provided by law and necessary for the respect of the rights or reputations of others or for the protection of national security, public order, public health or morals*”

Freedom of Expression is also contained in the African Charter (article 9) and the Ugandan Constitution (article 29).

As for homosexuals, they also have the right to express themselves as it was stated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and

³⁹ Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December 2003, para. 73

expression: “*all citizens, regardless of... their sexual orientation, have the right to express themselves*”.⁴⁰

4.2.7. Freedoms of Assembly and Association

These freedoms are protected under articles 21 and 22 of the ICCPR. While the former states that “*The right of peaceful assembly shall be recognized*”, the latter says that “*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*”. Both articles subject the freedoms only to such limitations that, being in conformity with the law, “*are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others*”. Articles 29 of the Ugandan Constitution and 10 and 11 of the African Charter give coverage to the freedoms of Assembly and Association as well.

In section 2.3. I noted how the police without legitimate reason had raided a conference on LGBT-rights in Kampala in June 2012. This is a clear example of attack to the freedom of peaceful assembly. As far as freedom of association is concerned, any attempt to form a group (for example a NGO) to support LGBT-people could be considered as promoting homosexuality within the meaning of Clause 13 of the Bill.

⁴⁰ Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo – Addendum Mission to Colombia, UN Doc. E/CN.4/2005/64/Add.3, 26 November 2004, para.75

4.2.8. Freedom of thought, conscience and religion

The first section of the Bill states *“The Bill aims at providing a legislation to protect the cherished culture of the people of Uganda, legal, religious, and traditional family values of the people of Uganda against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity”*. As we can see, one of the rationales given for the Anti-Homosexuality Bill is Uganda’s religious values. However, the Constitution of the country declares in article 7 that *“Uganda shall not adopt a State religion”* and protects the freedoms of thought, conscience and religion in article 29.1: *“Every person shall have the right to (...) b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning; c) freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with this Constitution; (...)*. This provision is backed by article 18 of the ICCPR and article 8 of the African Charter, which also recognize the three freedoms. In this context, no Ugandan can be obliged to follow any religious value, not even when the majority does live by them. This was the conclusion reached by the HRC in its General Comment No. 22: *“The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant (the ICCPR), including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers”*.⁴¹

⁴¹ UN Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18). CCPR/C/21/Rev.1/Add.4, 30 July 1993, para.9

4.3. The impact of the Bill on Human Rights Defenders

As I explained in previous paragraphs, by prohibiting the “promotion of homosexuality” the Bill is compromising the work of any individual or organization who deals with issues of human rights, sexual orientation and gender identity. This kind of actors are known as Human Rights Defenders (HRD). HRD are those people who aim at the promotion and protection of human rights and fundamental freedoms. They actually have a right to promote and protect human rights and fundamental freedoms. This right is recognized in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.⁴² The title of the Declaration provides then a definition of HRD, which assume both a right and a responsibility to strive for human rights respect worldwide. The criminalization of their activities is a direct attack to this right, contained in Article 6 (b) and (c) of the aforementioned Declaration, which reads as follows:

“Everyone has the right, individually or in association with others, to:

(...)

-Freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

-Study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters”

⁴² Adopted by General Assembly resolution 53/144, U.N.Doc.A/RES/53/144, 8 March 1999

The UN Special Representative on human rights defenders have expressed several times that special attention should be drawn to restrictions on the freedoms of expression and association of human rights defenders who advocate for the rights of gays and lesbians as well as the rights of other groups who can be considered more vulnerable. The reason given by the Representative was that these kind of groups are easily subject to prejudice, marginalization and public repudiation.⁴³ Following this statement, I argue that the work of HRD who fight for LGBT-rights in Uganda should be given special importance because homosexuals, bisexuals and transsexuals are a vulnerable group in the African country. Consequently, their right to protect and promote should not be restricted. Finally, I also want to mention the Resolution of the African Commission on Human and Peoples' Rights, where member states of the AU (like Uganda) are called upon "*to take all necessary measures to ensure the protection of human rights defenders*".⁴⁴

4.4. Forced HIV-testing and the rights of people living with HIV and AIDS

Before concluding with Section 4, I would like to comment a little bit more on the impact of the Bill on people living with HIV or AIDS. I argued earlier that the right to health of those living with HIV and AIDS could get seriously affected because they could stop wanting to have medical treatment for the fear of being accused of being gay. I have also argued that the clause that punishes the promotion of homosexuality would impede the work of schools and organizations aiming at raising awareness of HIV issues. In addition to all this, Clause 3 of the Bill considers that when the offender is living with HIV then the offence will constitute

⁴³ Report of the Special Representative of the Secretary General on Human Rights Defenders, E/CN.4/2001/94, para.89(g)

⁴⁴ Resolution on the Protection of Human Rights Defenders in Africa, 35th Ordinary Session of the African Commission on Human and Peoples' Rights, 21 May to 4 June 2004. Paragraph 4

“aggravated homosexuality” and the punishment shall be death penalty. Leaving aside the fact that death penalty is an awful practice, what I wonder about here is whether it really is useful to criminalize homosexual behavior to prevent HIV-transmission. I doubt it because LGBT-people are not the only ones who can live with HIV. Heterosexuals can get infected and transmit it too (and they actually do). According to UNAIDS (The Joint United Nations Programme on HIV and AIDS), in Uganda there are nearly 2,000,000 people living with HIV. I have not found any statistics declaring that all of them are homosexuals. That is why the focus should perhaps be on education and awareness on HIV issues rather than on criminalization. This was also the opinion of the HRC in *Toonen v. Australia* where the Committee noted that *“the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS”*. The Committee further declared that *“criminalization of homosexual activity would run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention”*. I think the Committee was totally right because the population has already started to associate HIV only with homosexuals and they think that a heterosexual do not risk being infected. In an interview with Rachel Adams, Bahati stated *“The evidence is there. HIV/AIDS is now more prevalent in gay people than in heterosexuals. Why? Because of the facts. Anal organs were not created for what they are using them for. So, stopping them —stopping this practice—is straight away stopping the rate of HIV. We want this behavior to stop as well as the health hazards and dangers that come with it”*.⁴⁵ I doubt this statement can meet reality because no evidence was provided by Bahati. The conclusions reached by UNAIDS were similar: *“There are no data indicating that the broad application of criminal law to HIV transmission will achieve either criminal justice or prevent HIV transmission. Rather, such application risks undermining public health and human rights. Because of these concerns, UNAIDS urges governments to limit criminalization to cases of intentional transmission, that is, where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it”*.⁴⁶

⁴⁵ Ibid ... above 18

⁴⁶ UNAIDS. Criminalisation of HIV transmission: Policy brief. Geneva, August 2008.
http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf

5. The Ugandan society: How are the Bill and homosexuality in general perceived? Conclusions and reflections on the mother of the newborn homophobia.

The previous section of this thesis has looked at the Bill from a legal perspective. I have argued that not only does the Bill violate fundamental human rights but it also leads to a breach of Uganda's international obligations under certain treaties to which it has become party. In this section, I will share my findings, conclusions and reflections on how the Ugandan society perceives human rights, homosexuality and the Bill itself as well as on where that perception might come from. I will also address the four sub-questions that I introduced in Section 1:

- The role of American Evangelicals in the spread of the new wave of homophobia
- Is it true that Uganda has certain homogeneous family values and a homogeneous culture where homosexuality could not fit in? If so, do Ugandans respect these values in practice?
- My hypothesis that the government could have used the Bill as a strategy to clean up its degraded reputation
- Some governmental and religious leaders have made the following affirmation: "Homosexuality has been imported and pushed in by the West". Can we disagree on it?

I have interviewed 15 Ugandans. I interviewed two persons face-to-face. The rest answered a questionnaire that I prepared. Apart from the interviews, I have conducted my own independent research to find out more about the question and sub questions. I will start this section by stating what the Ugandans that have collaborated in this thesis answered. The following paragraphs present the questions my questionnaire was composed of and a summary of the answers. I will first present all the questions and answers (one sub section for each question) and then my interpretation, conclusions and reflections on them in subsection 5.1.10.

5.1. The answers to the questionnaire

The questionnaire I prepared served five main purposes:

- Finding out how Ugandans feel about homosexuality
- Finding out how Ugandans feel about the Anti-Homosexuality Bill
- Finding out the idea that Ugandans have about what a human right is
- Finding out where Ugandans learn that homosexuality is not right
- Finding out whether Ugandans think that homosexuality is a sexual orientation one is born with

The next paragraphs show the questions and the answers. I have not included the three first questions of the questionnaire:

1. What is your profession?
2. How long have you lived in Uganda?
3. How long have you lived outside Uganda? In which country/countries?

The aim of these questions was only to have an idea of the person who was to answer the questionnaire but they are not directly relevant for the purposes of the thesis.

5.1.1 Why does a big part of the Ugandan population disapprove of homosexual behavior?

This question aimed at hearing the explanations Ugandans give about why they are reluctant to accept homosexuality, the ideas and views that they have in mind when it comes to same sex intercourse.

Ten out of fifteen people agreed that culture is one of the reasons why the Ugandan population disapproves of homosexual behavior.⁴⁷ Some claim that homosexuality has never existed in Uganda before the West imported it. Others claim that they have been raised learning that a man has to be with a woman. The testimony of “AB”, human rights defender and activist, makes me wonder whether it can be true that homosexuality has never existed in the African country? “AB” declares that *“Uganda has different cultures and they vary greatly towards sexual desire, activity and relationships. Some permit same-sex love and sexuality, especially in some communities in central region, while others critically disapprove of it”*.

Nine out of fifteen agreed that religious teachings in schools and churches against homosexuality are also a reason why homosexuality is considered wrong.⁴⁸ Answers to Question 5 explain this in more details.

Four Ugandans mentioned state-sponsored homophobia. Samson Kiyanzi, IT-professional, states: *“People we look up to (politicians, judges...) say that homosexuality is imported from the West. It is imported by the white men. Since we, black people, were controlled by white men in the past, accepting homosexuality reminds us of those days of slavery”*. Nakibuka

⁴⁷ They do not specify what they mean by culture. I will later devote one section to discuss this issue since this is one of my research sub questions

⁴⁸ Remember that Ugandans are very religious. 41% are Catholic, 40% Anglicans and 10% Muslims

Noor Musisi, lawyer by profession, recognizes that the fact that the police often arrest LGBT-people has made many Ugandans distrust this community.

Ivan Mugeere, IT-professional, declares that *“family is the most important thing in Uganda and gays cannot perpetuate the family”*.

Finally, “M.” alleges confusion in the society as the main cause: *“It is an odd behavior that is not defined. Nobody understands it and science is not giving any answers. It is not a disease, it is not a mental problem, and it is not a psychological disorder... What is it then?”*

5.1.2. Is the Homosexuality Bill a good idea?

The purpose of this question was to find out whether Ugandans agreed on the Anti-Homosexuality Bill. What I had in mind was that the fact that a person does not approve of same sex relationships does not necessarily mean that he or she would punish those who are willing to enter into that kind of relationship, just as the Bill does.

Out of fifteen interviewees, thirteen answered that the Bill is not a good idea. Most think that it is not necessary because homosexuality is already criminalized in the Penal Code. Both Kizanyi and Mukoda Sal’wa Balaba state that everyone has the right to enjoy their sexuality in the privacy of their rooms. According to them, the Bill should only punish those who try to *“force others to become gay”*⁴⁹. Ivan Mugeere thinks that gays need help and not punishment (*“They should be sent to therapy instead of being killed or imprisoned”*). Both Kakande Luclay, a social worker, and Issiko Ramadhan, a human rights student, agree that the Bill goes against the dignity and rights of the LGBT-community, no matter how much it clashes with Ugandan culture. Luclay adds that the Bill will put everyone in danger because anyone could be accused of being homosexual and punished if he or she cannot prove otherwise.

⁴⁹ I will later make some comments on this expression “force others to become homosexuals”.

Finally “P.O.” says that the bill in its context is not right because it imposes killing or imprisonment.

5.1.3. What does “human rights” mean?

This question was of special interest to me. I have argued during this thesis that LGBT-persecution violates human rights but obviously many Ugandans do not agree since they support this persecution. If I want to argue their position, it might be useful to find out what they understand by human rights. Some of the definitions given are the following:

-“*Human rights are freedoms everyone should enjoy*” (Samsom Kizanyi)

-“*Human rights are entitlements everyone is born with. They are not given. They should not be taken away*” (Kakande Lucly)

-“*Human rights means the ability for all humans to live freely without fear of persecution*” (P.O)

-“*Human rights are rights that protect and promote the well-being, livelihood and dignity of others*” (M.)

-“*Things you should be given because you are a human being*” (Ivan Mugeere)

5.1.4. Does the Anti-Homosexuality Bill constitute a violation of human rights?

This question is connected to the previous one. I wanted to explore whether Ugandans saw space for human rights in the hard penalties that the Bill imposes; in others words, according to Ugandans, will the Bill have effects (positive or negative) on human rights? In this case, all the interviewees answered that the Bill violates human rights because it imposes death penalty. They agree that nobody has the right to take someone else’s life. However, three of them seem to justify death penalty when it comes to try a person that has supposedly forced (or tried to force) others to “engage in homosexual behavior”. “M” points out that “*gay persons who deliberately target, entice, lure, recruit and rape children deserve the harshest punishment possible and there is no compromise to this*”. Mugeere and Kizanyi claim that “*the Bill only violates the rights of those gays who have sex because they want and without forcing or influencing others*”. They mean that it is right to have sex with a same-sex partner as long as

you do it in your privacy without others seeing it. As for Ramadhan, he thinks that the Bill cannot be considered a violation of the rights of the LGBT-community in those cases in which homosexuality issues clash with the Ugandan culture. He says that in these cases it is the rights of heterosexuals the ones that get violated because culture is above all.

5.1.5. Is homosexuality mentioned in churches and schools?

This question served the purpose of finding out when and where Ugandans begin to hear about same-sex intercourse as well as what they hear. Only two of the interviewees declared to not having heard about homosexuality in churches or at schools. The remaining thirteen say that it is mentioned very often. Lucalay reveals (and so do the other 13 testimonies) that teachers and pastors present homosexuality as being against *“the biblical teachings and the society norms and values”*. According to “M”, *“Schools like churches teach about good and bad values. Churches extract their teachings from scriptures. According to the scriptures, homosexuality is an abomination, it is immoral, it is a sin. However, churches like schools seek to promote love, respect and unity in society and offer counseling and solutions for persons engaging in homosexuality”*.

Four of the interviewees state that another reason given very frequently by teachers and pastors to condemn homosexuality is that it is against continuity and procreation. Mugeere confessed me during our interview: *“My religion teacher once said: God had a plan when he created human kind that a man has to be with a woman because people have to reproduce”*. Both Kiyanzi and Noor Musisi, along with Mugeere, recognize that students are often expelled from schools if someone finds out that they have had sex with a same-sex partner. Noor Mussi adds *“Nobody would want to associate with homosexuals in churches or schools”*.

5.1.6. Would the Bill contribute to a better society?

This question served the same goal as question 2: to have an idea about how Ugandan society perceives the Anti-Gay Bill. Surprisingly for me, all of the interviewees answered “no” to this question. The most frequently given reasons were two: the violence in the society would increase and homosexuality is not the issue that needs to be addressed most urgently.

As far as the first reason is concerned, Ramadham states that *“if (the Bill) is passed, it may create even more strife in Uganda because people will be punished severely on sexual grounds”*. As for Sal’wa Balaba, he is positive that *“it will only cause conflicts and attacks from UN for violation of human rights”*. Regarding the second reason, according to “P.O.” the Bill will never contribute to a better society because there are other life threatening issues that are more serious than homosexuality. In his opinion, the government should look into this first. He gives as examples child sacrifice, rape or corruption and reveals that in most of these cases the guilty-ones do not get punished. In the same line, in Luclyay’s words *“there are many problems which are more important than the gay bill like crime, rape, development of infrastructures like schools, hospitals and roads”*.

Apart from the two reasons pointed out above other justifications are given by the Ugandans who have collaborated in this thesis. For instance Waiswa considers that there is no way the Bill can contribute to a better society because it puts everybody, and not only LGBT-people, at risk. Noor Musisi notices that every time the Government makes an act punishable people start to commit the act more often. The more the act is prohibited, the more the society engages in its commission. As for Charles Baligasa Cuba, even though he is in favour of the Bill he is sure that international donors would cut financial aid to Uganda. Finally, Mugeere and Kinyanzi, whom I interviewed personally, do not think that the Bill would be healthy for the society except to prevent what they call “recruitment”, meaning by this homosexuals trying to get others into becoming homosexuals.

5.1.7. Can homosexual behavior be considered a serious offence or a felony?

This question and the next aimed at finding out how Ugandans feel about homosexuality. Nine of the interviewees think that it can be defined as a serious offence when it involves coercion and “recruitment”, but not when people do it willingly and in their privacy. For Sal’wa Balaba the act is not that serious although immoral. He says that *“We have people raping several months-old babies. Homosexuality is nothing compared to such acts”*. Homosexual behavior would not be such a big deal either for Ramadhan, who defines it as a *“deviant act”*.

As for the ones who claim that being gay is neither an offence nor a felony, for Noor Musisi the whole issue *“is about rights. If a person chooses to be gay why would his rights be infringed? It is his or her choice”*. “A.B.” fears that homosexuality will be treated as a felony if the Bill is passed. In his opinion, *“discrimination based on sexual orientation and/ or gender identity is an issue that transcends the community and is therefore a human right issue”*.

5.1.8. Should homosexuality be punished, recognized in the law or nothing special should be done?

None of the interviewees chose to punish homosexuality. 10 out of 15 chose “nothing special should be done” although most of them added that it has to be made clear that people can engage in homosexual behavior as long as they do it in privacy and without influencing and trying to recruit others.

5.1.9. Is a person born or induced homosexual?

Finally, the people interrogated were asked whether they believed that a gay is gay because he or she was born that way or because he or she was induced by others. This question was relevant in order to address section 5.2.4. The results were the following:

- Two answered “I have no idea”.
- Two answered “Some are born and some are induced”
- Five answered “Born”
- Six answered “Induced”

5.1.10. Conclusions and reflections

I would like to finish this part by drawing up some conclusion, reflections and interpretations I have come up with. I take for granted that the opinions of the interviewees are representative of some of the opinions that are supported in Uganda regarding my topic.

Religion and culture are the main reasons given on why the Ugandan population does not approve of homosexuality. Concerning the former, none of the religions followed in the country allows for same sex intercourse. As for the latter, I am quite confused about what Ugandans mean by culture. Some say that homosexuality has never existed in Uganda before the West imported it while others allege only that in the Ugandan culture a man can only be in a love relationship with a woman. What do they mean by culture then? Do they mean that there were no homosexual people in Uganda in the past and therefore homosexuality is not Ugandan or do they mean that homosexuality was there but it was not visible and a same sex relationship was not something one would think of having? I am inclined to the second option because I think that a homosexual is born that way and there is no reason to believe that Ugandan women would only give birth to straight children. Consequently, there must have always been homosexuals in Uganda. Moreover, it is my impression that when Ugandans talk about culture in this context what they really refer to is religious teachings; particularly that a man has to marry a woman and perpetuate. This impression comes from the fact that most of the interviewees highlighted and emphasized the importance of living by the religious values they learn in school and churches (Remember Mugeere’s words “*family is the most important thing in Uganda and gays cannot perpetuate the family*”)

Some Ugandans declare to dislike the Bill even though they do not think that homosexuality is acceptable. They consider that the criminalization established by the Penal Code is enough and think that it is not right to kill people. Therapy is often given as an alternative to punishment. At the same time, they have learnt that human beings have inalienable human rights but they are not sure what the expression “human rights” means. They get confused and come up with divergent definitions. Some call them freedoms; some call them entitlements; some call them things ... Many Ugandans seem to associate human rights violations with killing. They only consider that the Bill violates human rights when it imposes death penalty. This detail tells us that there are many Ugandans who do not understand the scope of the rights and freedoms their country has committed itself to respect. They do not understand that it goes beyond the right to life. In addition, some seem to justify a hard punishment when same-sex intercourse is visible to others. According to them, homosexuality can exist but it should not be seen by others. This can make us conclude that a prevalent opinion in Uganda is that homosexuality can bring some kind of harm into your life and for this reason it should not be visible.

Schools and churches teach that homosexuality is wrong. Consequently, people are raised hearing negative things about it. In my opinion, we internalize the values that we learn as we are growing up and this influences our way of thinking and interacting with others in the future. When we are adults, it is not easy to get distanced from those values. From my own experience, studying as well as getting in contact with new cultures and ways of living help us build our own personality and way of thinking. Uganda is a low-income country⁵⁰ and the majority of the population studies very little⁵¹. I assume that they are not given many opportunities to get well educated or travel. In my opinion, this would make difficult for them to reconsider the values they have been raised with. I have, in fact, observed that, within my interviewees, the ones who have education and have lived abroad for a while are the less radi-

⁵⁰ The World Bank, 2014. Data. Uganda

<http://data.worldbank.org/country/uganda>

⁵¹ According to UNICEF’s statistics, less than 20% of the youth attend Secondary School.

UNICEF, 2013. 31.12.2013. Statistics. Education

http://www.unicef.org/infobycountry/uganda_statistics.html

cal when it comes to not accepting alternative sexual orientations. This was the reason why I decided to include questions 1 to 3 in my questionnaire.

Surprisingly for me, none of the interviewees answered in question 12 that “homosexuality should be punished”. However, most of them added that punishment is the best option when same sex intercourse is visible to others and does not happen in the privacy of a room. This shows us how a big part of the population has a discriminating attitude against homosexuals. Not only are they unwilling to treat homosexuals as heterosexuals but they also wish to make same sex relationships invisible like if it was something that did not exist. The resort to therapy is evidence that some even consider homosexuality a health issue.

Through the testimonies of some of the interviewees we have also noted how there are Ugandans who acknowledge that the international community may strongly react against the Bill and that could affect the humanitarian aid they benefit from. They also fear that violence will spread. In addition, it does not seem that Ugandans forget that there are issues (such as corruption, work market or cost of living) that still deserve attention if they are to achieve a better society. As I interpret this, even though the Anti-Homosexuality Bill has all the attention in the media, it has not gotten the minds of all citizens off other existing problems. I will write a little bit more about this later on when I will discuss the role of the government in the increase of homophobia.

Finally, I conclude that I do not think many Ugandans will fully support the claim that homosexuals are born that way. Most of my interviewees answered either that they were not sure or that homosexuality is something you learn from others. The fact that some agree that homosexuality should not be visible makes me suspect that they support that homosexuality is an acquired behavior because, if they do not want to witness it, it might be because they fear becoming homosexuals.

5.2. Sub questions: reflections and hypothesis

The results of the interviews have given us a clearer picture of how homosexuality is perceived and handled in the Ugandan society. I would like to give a few more examples of this perception that I have found out by conducting my own independent research. LGBT-rights activist Frank Mugisha is the former director of Sexual Minorities Uganda (SMUG), an organization at the forefront of the gay-rights movement in the country that offers counseling and suicide-prevention services to those who live openly as gay men or women. In an interview in 2011, Mugisha explained what the daily life for a gay person is like in Uganda. According to him, an openly gay or lesbian, whether he or she is activist or not, wonders every day if he or she is going to be beaten or harassed: *"You have to calculate and decide. Should I take that street, should I go to that shopping mall, should I do this today? Because you don't know where the harassment will come from"*. As for people who are not out of the closet, Mugisha states *"Their fear is the media, their family finding out about them, the media finding out about them, their workplaces finding out about them. They fear that they could be fired, that they could be thrown out of their homes"*.⁵² The testimony of freelance reporter Kaj Hasselriis after his trip to Uganda do not clash with Mugisha's words. Isaac, a young gay man he met, told him a chilling story. One night, one of his friends was making out with his boyfriend at home. Then his parents walked in. The father beat his son's boyfriend to death and then told the police it was a robber.⁵³ As for Blessed Busingye, he was, according to the reporter, kicked out of his local supermarket in Kampala for being gay. He was told by the manager *"your presence makes us uncomfortable"*. Busingye also tells that back in school he

⁵² Desmond-Harris, Jenée. 28.11.2011. *Ugandan, Gay and Brave. Activist Frank Mugisha weighs in on homophobia in his country and how African Americans can help.*

<http://www.theroot.com/views/ugandan-gay-and-brave?page=0,1>

⁵³ Hasselriis, Kaj. 09.02.2010. *Xtra reports from Uganda: Finding Kampala's gay bar*

http://www.xtra.ca/public/National/Xtra_reports_from_Uganda_Finding_Kampalas_gay_bar-8226.aspx

had a boyfriend named John and six other gay friends. One day a straight boy ratted them all out. Busingye and his friends were sent to the principal's office. The principal beat them and yelled at them *"you have destroyed the school's name"*. All the boys were expelled and thrown into jail.⁵⁴

After reading all these stories and testimonies, I wondered: how has this level of homophobia been reached? I have not found evidence proving that such level of hate and violence have existed in Uganda before so this new wave of homophobia must have started somewhere. Mugisha states that homosexuality is not new at all in Uganda: *"When I was growing up, I knew people who lived together, man and man, as if they were married, and no one harassed them, no one arrested them. What has then made homophobia increase?"*

Mugisha perceives that there is a new wave of religion that has come to Uganda to say that homosexuals are evil. In the activist's opinion, this wave has its roots in U.S. Evangelicals who have come to Uganda because *"they have identified homosexuality as the issue they can pick on. Uganda is very Christian and they know that Ugandans are going to listen when they say homosexuality is a sin"*.⁵⁵ I suppose that Mugisha is just giving his opinion because he does not provide specific evidence. In any case, his words can be the starting point of the first of my sub questions: The power of American Evangelicals in Uganda. Are they the mother of the new born homophobia?

⁵⁴ Hasselriis, Kaj. 11.02.2010. *Xtra reports from Uganda: Young activist tells tale of beating, prison & defiance*

http://www.xtra.ca/public/National/Xtra_reports_from_Uganda_Young_activist_tells_tale_of_beating_prison_defiance-8241.aspx

⁵⁵ Ibid ... above 52

5.2.1. The power of American Evangelicals in Uganda. Are they the mother of the new born homophobia?

The journalist John Sharlet carried out an investigation on the role that “The Family” had had in the formulation of the Anti-Homosexuality Bill. “The Family” is a secretive fellowship of powerful American Christian politicians who are anti-gay and anti-abortion. It is based in Washington and Bahati, the author of the Bill, is a member. In an interview with the New York Times, Bahati said that the idea for the bill first arose from a conversation with members of The Family in 2008, because it was too late in America to propose such legislation. According to Sharlet’s study, lobbying for the bill in Uganda has been generously funded by U.S. Christian organizations.⁵⁶ The documentary “Missionaries of hate”⁵⁷, released in CURRENT TV in 2010, explores the influence that the presence of American Evangelicals in Uganda has had in the increase of homophobia. As the documentary shows, there are two men who have played a leading role in the whole campaign: Scott Douglas Lively and Pastor Martin Sempa. This role is showed by the film in the following way:

1-Scott Douglas Lively is an American author, attorney and activist known for his opposition to LGBT rights. He is the president of Abiding Truth Ministries, a conservative Christian organization located in Temecula, California, and the former state director of the California branch of the American Family Association. He has paid visits to many countries all over the world to spread his views on family values and religion. Lively has written several books about homosexuality, including “the Pink Swastika”, which claims, among other things, that homosexuals are the true inventors of Nazism. In March 2009, he landed in Uganda to give a

⁵⁶ Simons, Emily. 28.01.2013. *The Power of American Evangelicalism in Uganda*
<http://www.theinternational.org/articles/321-the-power-of-american-evangelicalism-in-u>

⁵⁷ CURRENT TV. Vanguard Season 4, Episode 1. 26.05.2010. *MISSIONARIES OF HATE*.
TV Documentary.

<http://www.youtube.com/watch?v=dL1tyYFicXo> or <http://topdocumentaryfilms.com/missionaries-of-hate/>

conference called *“How Ugandans can protect themselves from homosexuality”*. One of his sentences during the conference was *“The gay movement is an evil institution whose goal is to defeat the marriage-based society”*. He also declared to have observed a massive recruitment of schoolchildren into homosexuality in Africa. Another of his subjective statements was *“Homosexuality has historically been adult to teenager, not adult to adult”*. It is my impression that this conference had an explosive effect in Uganda because one month later the Anti-Homosexuality Bill was introduced in the Parliament. The evidence that I have found do not show with absolute clarity the links between Lively and Parliamentarians but give reasons enough to suspect that he was the instigator (or at least one of the instigators) of the Bill. For example, in an interview with Vanguard correspondent Mariana van Zeller (as the documentary shows), Lively recognized that his ideas were likely to be better received in Uganda than in the United States because, in his words, *“America is not Christian anymore”*. This strongly suggests that his visit to Uganda was not a random visit but he had the intention of introducing his ideas. The American author stated that he had gone to Uganda to start the pro-family movement: *“Then I heard about the bill. I knew that they wanted to draft a bill against homosexuality but I did not know it was so hard. I always said that the Bill should emphasize rehabilitation and not punishment. I would not have written it this way”*. It may seem that he had nothing to do with the drafting of the Bill, like if the Bill had already been there when he arrived. However, Kapyia Kaoma, an Anglican priest from Zambia working as a Senior Religion and Sexuality Researcher for Political Research Associates (PRA), attended and filmed the 2009 conference and declares that a week later, Ugandan parliamentarians circulated the first draft of the Bill. *“The original bill reads like Scott Lively speaking again”* Kaoma said.⁵⁸ In addition, Lively, himself, implied in an interview for NPR (National Public Radio) that not only did he have access to the Parliament but also the possibility to suggest future legislation. *“I have intermediaries that are friends that know members of parliament. In fact, when the Russian law⁵⁹ just passed a few months ago, I suggested to the Ugandans through my friend Stephen Langa that Uganda should drop the other bill and adopt what the Russians did,*

⁵⁸ Harris, Bryant. *Uganda’s Anti-Gay Bill Puts U.S. Aid at Risk*

<http://www.ipsnews.net/2014/02/ugandas-anti-gay-bill-puts-u-s-aid-risk/>

⁵⁹ Lively refers to a piece of legislation that was recently passed in Russia and that imposes heavy fines for providing information about homosexuality to people under 18.

which bans homosexual propaganda to children”.⁶⁰ Pepe Onziema, gay right activist working for SMUG, is also interviewed in the documentary by Van Zeller. The young woman said *“Things started to change after the visit of evangelicals in 2009, especially after the conference by Lively. He introduced the idea that the agenda of homosexuals is to recruit children. Here in Uganda we look up to Americans. Therefore, if they come here and say things like that people are definitely going to believe them”*. Bishop Christopher Senyonjo, who is one of the few Ugandan religious leaders who supports homosexuality, also links the Bill to the visit of Scott Lively. In his words, *“when Scott Lively came over here, I attended what he was talking about at the Triangle Hotel, and after that he met a number of politicians. After all these meetings, then the bill was drafted”*.⁶¹ Finally, I would like to mention that when Lively was asked later in the interview with Vanguard correspondent whether he condemned the Bill, he answered: *“I do not support death penalty but here it is a question of the lesser of two evils. Should we allow the American and European activists to continue to do what they have already done to Uganda or should we allow the bill? I think that the lesser of the two evils is for the bill to go through”*.

2-Pastor Martin Ssempe has had, along with Lively, a leading role in the development of national hate against homosexuality. We can see in the documentary that he is a charismatic man with the ability to reach the population with his speeches. Ssempe often preaches in universities and churches and has organized mass protests against homosexuality. His speeches on family values and religion has made him the favorite target of American Evangelicals, with whom he has had uncountable encounters as we see in the film. In an interview with Van Zeller, Ssempe says that *“Homosexuality as a vice has existed in Africa but not as a human right. It has been imported and pushed in by the west”*. Pastor Ssempe is not only a skillful preacher but also, from my point of view, a manipulator. In the documentary, we can see that

⁶⁰ Hear to the whole interview here:

<http://www.npr.org/2014/02/27/283456094/uganda-punishing-gays-sodomy-is-not-a-human-right-says-evangelical-leader>

⁶¹ Heuler, Hilary. 29.03.2013. *Activists Say Ugandan Homophobia Fueled by American Religious Right*
<http://www.voanews.com/content/activists-say-Ugandan-homophobia-fueled-by-american-religious-right/1592941.html>

in a press conference he showed everybody videos of explicit gay porn. Based on these videos, he started to present gay sex as a disgusting act, describing disgusting practices that do not happen to meet reality, hence with the purpose of shocking the crowd. He for example affirmed that homosexuals eat feces before practicing anal sex. I have not found any hate speech pronounced by Martin Ssempe before Lively's visit even though he had been pastor for a long time. This suggests that he could have helped American evangelicals carry out a campaign against homosexuality.

Freelance reporter Kaj Hasselriis, whom I mentioned earlier, witnessed how much influence Christians have on the African country: *"Before landing in Uganda, on KLM Flight 561 from Amsterdam to Entebbe, I was surrounded by Christian missionaries. The plane was literally packed with Bible-thumpers from Texas to North Carolina. Christianity is everywhere here. Most of the rickety mini-buses that carry people from town to town are branded with signs like "God is great" and "Jesus lives." Grocery stores are stacked with Bibles. And every Sunday morning, the air is filled with the sounds of worshippers."*⁶²

The clearest evidence that shows that Uganda is following the teachings of the Catholic Church is the meeting of Pope Benedict XVI in 2012 with the aforementioned Parliament speaker Rebecca Kadaga, one of the main sponsors of the Anti-Homosexuality Bill. The Pope blessed Kadaga and later stated that gay marriage is a threat to justice and peace.⁶³

Having watched the documentary and gone through my findings, it is my hypothesis that:

-Scott Lively was one of the instigators of the Anti-Homosexuality Bill

⁶² Hasselriis, Kaj. 07.02.2010. *Xtra reports from Uganda: Confronting homophobia in the Pearl of Africa*
http://www.xtra.ca/public/National/Xtra_reports_from_Uganda_Confronting_homophobia_in_the_Pearl_of_Africa-8207.aspx

⁶³ Houston, Andrea. 26.12.2012. *The Catholic Church's hate*
http://www.xtra.ca/public/National/The_Catholic_Churchs_hate-12962.aspx

-American Evangelicals are brainwashing people's minds to an extent making them think that homosexuality is evil and consequently they are a chief factor in explaining the steep rise in homophobia. I explained in the introduction that by brainwashing I meant process of indoctrination by use of religion. How would Evangelicals influence people's minds? On one hand, they seem to be pushing religion into people's lives so that it gains even more and more importance. As Hasselriis stated, religion is all over: when you get on the bus, when you go to the grocery store, when you go for a walk and hear a preacher, when you go to church, when you go to school... The propaganda does not stop. Ugandans are already very religious and listen to pastors. If propaganda is made permanently about the positive of religion then the population is not likely to stop believing. Instead people are likely to convince themselves even more that religious values are the way to go. On the other hand, I have talked about two conferences given by leaders Ssempe and Lively. The language, manners and tone used in those conferences did not seem to aim at making people acknowledge the existence of homosexual people and think for themselves whether this is respectable or not but rather at condemning homosexuality openly, hardly and with no exceptions (remember quotes like "*The gay movement is an evil institution whose goal is to defeat the marriage-based society*" or the description of same sex intercourse provided by Ssempe. Even Lively's conference was entitled "*How Ugandans can protect themselves from homosexuality*", which sounds like how to protect oneself from illness). These conferences are the only ones that have reached the media but I assume that there have been a lot more since missions pro family values have been landing in Uganda since 2009. I believe that by repeating continuously sentences like "God is great", "Jesus will save you" or "homosexuality is against the Bible" you can make people follow your teachings, especially if they are already believers and many do not have a high level of education⁶⁴. They are not likely to reconsider the values that they are learning and internalizing every day because this is the only thing that they hear and see.

⁶⁴ According to UNICEF, less than 20% of the youth attend Secondary School

5.2.2. Traditional values in Uganda

The second sub-question arose from the fact that some Ugandan leaders had stated that homosexuality was against Ugandan culture and values. If we go back to the answers to my questionnaire, we will find that many of the interviewees alleged also that culture was one of the reasons why the population was reluctant to accept homosexuality. The Bill itself in its first section, entitled “the principle”, summarizes its main purposes and states that it aims at providing a legislation to protect:

- a) The cherished culture of the people of Uganda;
- b) Legal, religious, and traditional family values of the people of Uganda against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity.

But as I mentioned in the introduction and then explained more in detail in section 5.1.10., it was not entirely clear what it was meant by culture. Some testimonies seemed to mean that there have never been homosexuals in Uganda before the presence of Western countries while others seemed to declare that homosexuals existed but they were invisible and they should continue to be in order to protect traditional family values. My hypothesis was that when Ugandans talk about culture they refer mostly to religion and traditional marriage, to the idea that a man has to be with a woman and perpetuate. Given this context there are two questions I wish to discuss:

-Can we really talk about a homogeneous traditional culture in Uganda?

-If it is true that some common traditional features, based mostly on religious family values, exist, are heterosexual Ugandans the first to respect them?

Concerning the first question, my answer would be that culture is not homogeneous in Uganda. This statement is based on the following evidence. “AB”, one of the Ugandans who agreed to answer to my questionnaire, stated that *“Uganda has different cultures and they vary greatly towards sexual desire, activity and relationships. Some permit same-sex love and sexuality especially in some communities in central region, while others critically disapprove of it”*. In the same line, Sylvia Tamale provides some examples that show that family institutions change from one community to another. For example, marriage between first cousins is

considered the best type of union among the Bahima. In contrast, marriage among blood-related individuals is a taboo among the Baganda. As we can see, the “traditional family” idea is challenged in Uganda. As for the second question, the blog “womanstats” published in 2012 the experience of “CJ”, who spent four months in Uganda researching about gender roles. According to her, many men confessed how proud they were of the fact that they had cheated on their wives. Many told her that they would cheat on their wife if she were willing to have sex. She often saw men drinking away their money while women were trying to feed and clothe their kids with what little money they could earn alone. In addition, the Bill says that it seeks to fight promiscuity. However, as the aforementioned blog pointed out, many school-age girls would grant older men sexual favors in exchange for small amounts of money. As it turns out, it is very common in Uganda to see young teenage girls drop out of school because they have babies and the father has disappeared.⁶⁵ My conclusion is that, if Ugandan culture translates into the religious perception of a love relationship, we cannot talk about a strict homogeneous national culture in Uganda but instead several divergent cultures exist (some even legitimize same sex intercourse). It is true that the majority, due to the influence of religion, defend the idea of traditional family but in practice many men seem to not respect it and we can find different types of families in the country (from a single underage mother to the traditional family composed of mother, father and children). This makes me suggest that it is not right to tag homosexuals as a threat to traditional family because, to begin with, this traditional family is not established (in practice) in Uganda as strongly as leaders are trying to make us believe. In addition, if it is true that some heterosexual men cheat on their wives and have unprotected sex with underage girls, they are the first ones to threaten the credibility of traditional family. Allowing homosexuality would then not be, in my opinion, such a big attack to Ugandan traditions because these are already challenged and even violated by heterosexuals themselves.

⁶⁵ CJ. 23.09.2012. *Gender Roles in Uganda*

5.2.3 A strategy of the government?

As I pointed out in the introduction, another of the arising sub questions is the role that the government has had in the persecution of the LGBT-community. As I have noted in this paper, the government has contributed to the spread of homophobia by enacting the Anti-Homosexuality Bill, condemning homosexuality publicly and arresting LGBT-rights supporters. The issue that I want to address is whether the government has used LGBT-persecution as a strategy to achieve its political goals.

In 2009, Human Rights Watch released a report titled “Illegal Detention and Torture by Uganda’s Joint Anti-Terrorism Task Force (JATT)”. JATT is a security agency of the government of Uganda. The report documented the task force's abusive response to alleged rebel and terrorist activity by unlawfully detaining and brutally torturing suspects. It described how agents of JATT carried out arrests wearing civilian clothes with no identifying insignia and did not inform suspects of the reasons for their arrest. Thanks to this report, the international community found out about the human rights atrocities that were occurring in Uganda at that time. It was actually in October 2009, short after the release of this report, that the Anti-Homosexuality Bill was submitted into the Parliament.⁶⁶ The Bill did not become law and got forgotten until 2011, when there was a new attempt to pass it. This attempt came right after a wave of demonstrations in Uganda against rising fuel and food prices and corruption. The police fired tear gas to the demonstrators and arrested many people and opposition leaders. The Attorney General declared illegal and banned the opposition

⁶⁶ -08.04.2009. Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda. Human Rights Watch Report

<http://www.hrw.org/reports/2009/04/08/open-secret-0>

-Garrison, Ann. 11.01.2011. *Uganda's anti-gay distraction is back*

<http://www.anngarrison.com/audio/ugandas-anti-gay-distraction-is-back>

group Action For Change for being the instigator of most demonstrations.⁶⁷

The hypothesis I come up with is that the Government may have resorted to the Anti-Gay Bill in order to get peoples' minds off their discontentment. Thanks to the Bill, the media has stopped writing about the aforementioned demonstrations. It does not seem that the population keeps demonstrating against the government. If this is accurate, it seems that national authorities have managed to clean up its reputation within the Ugandan citizens. The Anti-Homosexuality Bill is all media talks about. My hypothesis is hard to prove. It arose from the fact that, if we care to read history, we will find many examples of how governments resort to the strategy of turning against weak and voiceless groups whom they can blame for the troubles of the country when its power is threatened. We can cite as examples the following:

-In Uganda, colonialists at various times blamed chiefs and elders as well as Muslims as the main obstacles to progress and civilization

-Dictator Idi Amin blamed Asians for Uganda's economic problems and expelled all the Indians in the 1970s

-Milton Obote initiated a campaign of hostility in the 1980s towards refugees in Uganda, particularly Rwandans, when his political power got threatened.

-The transmission of HIV/AIDS at various points in our history has been blamed on commercial sex workers, truck drivers, young women aged 15-23 and other weak groups.

-When native South Africans faced a dire economic crisis, they turned against black "foreigners", blaming them for the high unemployment rates and sparking off brutal xenophobic attacks against helpless immigrants/migrants and refugees in May 2008.⁶⁸

Apart from these examples, we have observed how positively Ugandans react when somebody speaks up publicly against homosexuality. I mentioned earlier that Rebeca Kadaga, Par-

⁶⁷ -BBC, 2012. 04.04.2012. *Uganda bans activist group ahead of protest*
<http://www.bbc.co.uk/news/world-africa-17619041>

1 -BBC, 2011. 14.04.2011. *Uganda: Police tear gas 'walk-to-work' protesters*
<http://www.bbc.co.uk/news/world-africa-13078400>

⁶⁸ Ibid ... above 27. p.51-52

liament member, was received as a hero in Uganda after her visit to Canada, where she reproached Canadian Minister of Foreign Affairs for a question she interpreted as “promotion of homosexuality”. If we go back to the testimony of Ivan Mugeere, one of my interviewees, he pointed out that people distrust LGBT because leaders and other people they look up to say that homosexuality is wrong. Considering all this, I conclude that the population must be quite happy now with the government since it has taken big steps in its attempt to protect what they call Ugandan culture. However, as we saw in section 5.1., some people still have not forgotten that in Uganda there are big problems that still need to be resolved and that homosexuality is not the biggest threat to the welfare state.

5.2.4. “Homosexuality has been imported and pushed by the West”

The final sub question concerns the position that has officially been adopted by government and religious leaders. They state that homosexuality did not exist in Uganda until the West imported it. As I mentioned earlier, in a meeting with Robert F Kennedy Centre for Justice and Human Rights, President Museveni accused European countries of trying to promote homosexuality and sexual liberalization. Pastor Ssempe affirmed in an interview that homosexuality as a vice had existed in Africa but not as a human right. In his opinion, this has been imported and pushed in by the west.

As I have shown during this thesis, some of the testimonies that I have collected verify that there have always been homosexuals in Uganda. However, I think that, in order to address this issue properly, the debate should be about whether we consider that a homosexual is born or induced. If we consider that homosexuality is something you are born with, there is no way the West could have pushed it in Uganda. In contrast, if we defend that homosexuality is an acquired practice, then we can support the statement that homosexual behavior has been introduced by LGBT-friendlier countries. As I see it, a person is born a homosexual. For this reason, it does not make any sense to me when I hear that this sexual orientation has been pushed by Western countries. In any case, Uganda has ratified something called “principle of non-discrimination”. Ssempe recognizes that homosexuality is not something new but accuses the West of introducing a right to be homosexual. Ssempe has misunderstood the Western claims. A right to be homosexual as such does not exist in any national or international con-

vention. However, there is a right not to be discriminated against for any reason whatsoever that Uganda has ratified and included in its national Constitution.

6. Conclusions

Five years after it was introduced in the Parliament, the Anti-Homosexuality Bill has finally become national law. This means that being homosexual in Uganda is now punished with imprisonment (even life imprisonment in some cases). Nobody knows what the effects of this Bill will be. We have the example of Nigeria, with devastating effects, where homosexuals are beaten up, arrested, killed, and humiliated in public. In any case, the Ugandan Act violates some of the human rights and freedoms Uganda has committed itself to respect upon accession to the ICCPR, the ICESCR, the CAT and the African Charter of Human and People's Rights. These rights are even recognized and protected in the national Constitution.

The Ugandan society seems to support the Bill at least to some extent. They perceive that it only violates human rights in those cases where death penalty is imposed. The majority implies that homosexuality is a wrong acquired behavior when they support either that it should not exist or that it should only happen in the privacy of a room without others witnessing it. The most prevailing opinion is that LGBT-rights clash with religious family values. People start learning these values in churches and schools from a very young age. Uganda is a poor country and few complete secondary education. This makes them, in my view, less likely to learn new things and reconsider the values they have been raised with. In addition, governmental leaders and other people the population looks up to, as parliamentarians or judges, speak up publicly against homosexuality. Most allege that it is not a part of Ugandan culture and that Western human rights activists have imported it. This is a clear evidence of the idea that prevails in the society: homosexuals are not born that way but induced by others. I have challenged the idea that homosexuality is not Ugandan. I have argued that homosexuals have always existed in the African country and that it is not right to tag them as a threat to national culture because to begin with it is not accurate to say that in Uganda there is one single homogeneous culture. If we understand Ugandan culture as protection of religious family values, we can find different types of families and communities that step away from that tradi-

tional idea. In addition, if my sources are accurate, traditional marriage is threatened in practice by those heterosexuals who cheat on their wives or have unprotected sex with teenage girls whom they abandon when they get pregnant.

As for the Bill, American Evangelicals might be behind not only the Act but also the increase of homophobia. They have missions all over the country and one can find its teachings everywhere one goes. Conferences and seminars are used to put the LGBT-community in a very negative position. I observe a campaign against this community promoted by both American missionaries and the government. The government has gained a lot out of enacting the Bill. Demonstrations have decreased and the media has stopped talking about other problems that had led to the discontentment of the population. Was this a strategy from the beginning? Maybe. Nobody knows what will happen in the future but the effects could be devastating if we take into account that gay people got killed even before the Bill became law. It is also possible that other African countries decide to follow Uganda's example. Uganda is not the first country that enacts anti-homosexuality legislation. Nigeria, Liberia and South-Sudan did it before. Is legislating against LGBT becoming the new habit in Africa?

7. Table of References

7.1. Treaties and Statutes

- Bill n.18. The Anti-Homosexuality Bill, 2009. Bills supplement to the Uganda gazette No. 47 Volume CII dated 25th September 2009.
- The African Charter on Human and Peoples' Rights, Nairobi June 27, 1981.
- The Constitution of the Republic of Uganda, October 8, 1995.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly Resolution 39/46 on 10 December, 1984.
- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly Resolution 53/144 on 8 March, 1999.
- The International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 21/2200 on 16 December 1966
- The International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 21/2200 on 16 December 1966
- The Uganda Penal Code Act, 15 June, 1950
- The Universal Declaration of Human Rights, proclaimed by United Nations General Assembly Resolution 217 A (III) in Paris on 10 December, 1948

-The Vienna Convention on the Law of Treaties, Vienna 23 May, 1969

7.2 Judgments/Decisions

-Asylum Case (Colombia v. Peru). Judgement 20 November 1950, (1950) ICJ Reports 2667.2.1. Cases

-Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

-Zimbabwe Human Rights NGO Forum / Zimbabwe. Communication 245/02. African Commission on Human and Peoples' Rights

7.2.2. Comments, reports and resolutions

-African Commission on Human and Peoples' Rights, twenty first activity report, EX.CL/322 (X), January 2007.

-Amnesty International 2010. Uganda: Anti-Homosexuality Bill is Inherently Discriminatory and Threatens Broader Human Rights. 07.01.2010. AFR 59/003/2010.

-Communication No. 488/1992: Australia. UN Human Rights Committee. CCPR/C/50/D/488/1992, 4 April 1994 (Toonen v Australia)

-General Assembly resolution 53/144, U.N.Doc.A/RES/53/144, 8 March 1999

-UN Human Rights Committee (HRC), CCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982.

- General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18). UN Human Rights Committee. CCPR/C/21/Rev.1/Add.4, 30 July 1993
- Human Rights Watch Report, April 2009. Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda.
- Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo – Addendum Mission to Colombia, UN Doc. E/CN.4/2005/64/Add.3, 26 November 2004
- Report of the Special Representative of the Secretary General on Human Rights Defenders, E/CN.4/2001/94, January 26, 2001.
- Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, E/CN.4/2001/9, January 11, 2001
- Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December, 2003
- Resolution on the Protection of Human Rights Defenders in Africa, 35th Ordinary Session of the African Commission on Human and Peoples’ Rights, 21 May to 4 June 2004
- UNAIDS. Criminalization of HIV transmission: Policy brief. Geneva, August 2008.

7.3. Secondary Literature

7.3.1 Books

- Javaid Rehman, International Human Rights Law (Pearson, 2nd ed., 2010)

7.3.2 Articles

- Adams, Rachel. 13.12.2012. *I Spoke to the Author of Uganda's Anti-Homosexuality Bill*
- Aljazeera, 2014. 25.02.2014. *Ugandan president signs anti-gay law*
- Amnesty International, 2011. Hald, Merete. 27.01.2011. *Homoaktivist brutalt myrdet i Uganda.*
- Amnesty International Norway, 2012. Holst-Pedersen Kvam, Ina. 22. 06.2012. *Farlig for homofile i Uganda*
- Amnesty International Norway, 2012. Jensen, Martine Hoff, 30.11.2012. *Kan stå om livet for homofile i Uganda*
- Amnesty International Norway, 2012. Jensen, Martine Hoff, 04.12.2012. *Uganda: Stopp dødsstraff for homofili!*
- Amnesty International Norway, 2013. Bakken, Ingrid Linde. 20.02.2013. *LHBT-aktivist i Uganda: Frykten er verst*
- BBC, 2011. 14.04.2011. *Uganda: Police tear gas 'walk-to-work' protesters*
- BBC, 2012. 04.04.2012. *Uganda bans activist group ahead of protest*
- BBC, 2013. 25.06.2013. *Amnesty International condemns 'homophobia' in Africa*
- BBC, 2013. 20.12.2013. *Ugandan MPs pass life in jail anti-homosexual law*
- BBC, 2014. 17.01.2014. *Uganda President Yoweri Museveni blocks anti-gay law*
- BBC, 2014. 24.02.2014. *Ugandan President Yoweri Museveni signs anti-gay bill*
- BBC News Africa, 2014. 06.03.2014. *Nigeria gays: 20 lashes for 'homosexual offences'.*

- Bromley, David G. (1998). *"Brainwashing"*. In William H. Swatos Jr. (Ed.). *Encyclopedia of Religion and Society*. Walnut Creek, CA: AltaMira. pp. 61–62. ISBN 978-0-7619-8956-1

- Browning, Michael (2003-03-14). *"Was Kidnapped Utah Teen Brainwashed?"* *Palm Beach Post* (Palm Beach). ISSN 1528-5758

- CJ. 23.09.2012. *Gender Roles in Uganda*

- Desmond-Harris, Jenée. 28.11.2011. *Ugandan, Gay and Brave. Activist Frank Mugisha weighs in on homophobia in his country and how African Americans can help.*

- Garrison, Ann. 11.01.2011. *Uganda's anti-gay distraction is back*

- Harris, Bryant. *Uganda's Anti-Gay Bill Puts U.S. Aid at Risk*

- Hasselriis, Kaj. 07.02.2010. *Xtra reports from Uganda: Confronting homophobia in the Pearl of Africa*

- Hasselriis, Kaj. 09.02.2010. *Xtra reports from Uganda: Finding Kampala's gay*

- Hasselriis, Kaj. 11.02.2010. *Xtra reports from Uganda: Young activist tells tale of beating, prison & defiance*

- Heuler, Hilary. 29.03.2013. *Activists Say Ugandan Homophobia Fueled by American Religious Right*

- Houston, Andrea. 26.12.2012. *The Catholic Church's hate*

- Houston, Andrea, 14.02.2013. *Indomitable activist*

- J. Lester Feder . 19.01.2014. *Ugandan President Tells U.S. Activists He Will Reject Anti-LGBT Law, Seek To 'Protect Children' Instead*

- Kaaya, Sadab Kitatta. 26.01.2014. *Museveni sets terms for signing gay bill*

-Kowal, D. M. (2000). Brainwashing. In A. E. Kazdin (Ed.), *Encyclopedia of psychology*, Vol. 1 (pp. 463-464). American Psychological Association

-LGBT Helpline. *What Is LGBT?*

-LLH (Landsforeningen for lesbiske og homofile), 2011. *Anti-homo loven i Uganda på bordet igjen*. 10.05.11

-Michael Hollander, *Gay Rights in Uganda: Seeking to Overturn Uganda's Anti-Sodomy Laws*, 50 Va. J. Int'l L. at 220 n.2 and 259 (2009)

-Nossiter, Adam. 15.02.2014. *Mob Attacks More Than a Dozen Gay Men in Nigeria's Capital*

-Prime Uganda Safaris, 2012. *People & Cultures of Uganda*

-Roberts, Scott. *Wife of Uganda's president denies Anti-Homosexuality Bill is designed for persecuting gays*

-Tamale, Sylvia. *A Human Rights Impact Assessment of the Ugandan Anti-homosexuality Bill 2009*.

-The telegraph, 2014. Debusmann, Bernd. 14.01.2014. *Dozens of men arrested for being gay after Nigeria quietly passes homosexuality legislation*

-Zapata, Jean Paul. 31.03.2014. *Gay Nigerians stripped naked and whipped in public after sex party*.

7.3.3. Web pages

-<http://data.unaids.org>

-<http://data.worldbank.org/>

-<http://psycnet.apa.org>

-<http://womanstats.wordpress.com>

-<http://wp.patheos.com>

-<http://www.aljazeera.com>

-<http://www.amnesty.no>

-<http://www.amnesty.org>

-<http://www.anngarrison.com>

-<http://www.bbc.co.uk/news>

-<http://www.bbc.com>

-<http://www.buzzfeed.com>

-<http://www.equalrightstrust.org>

-<http://www.gaystarnews.com>

-<http://www.hrw.org>

-<http://www.iglhrc.org>

-<http://www.ipsnews.net>

-<http://www.lgbt.ie/information.aspx?contentid=84>

-<http://www.llh.no>

-<http://www.npr.org/>

-<http://www.nytimes.com>

-<http://www.observer.ug>

-<http://www.parliament.go.ug>

-<http://www.pinknews.co.uk>

-<http://www.primeugandasafaris.com>

-<http://www.telegraph.co.uk>

-<http://www.theroot.com>

-<http://www.ulii.org>

-<http://www.unicef.org>

-<http://www.vice.com>

-<http://www.visituganda.com/about-uganda/>

-<http://www.voanews.com>

-<http://www.xtra.ca/>

-<http://www.youtube.com/watch?v=dL1tyYFicXo>

7.3.4. Documentaries

-CURRENT TV. Vanguard Season 4, Episode 1. 26.05.2010. *MISSIONARIES OF HATE*.
TV Documentary

-Attachment 1

QUESTIONNAIRE

1. What is your profession?
2. How long have you lived in Uganda?
3. How long have you lived outside Uganda? In which country/countries?
4. Why do you think most of the Ugandan population disapproves of homosexual behavior?
5. Do you think that the homosexuality bill is a good idea?
6. What does “human rights” mean to you?

7. Would you say that the Anti-Homosexuality Bill constitutes a violation of human rights?
8. Is homosexuality mentioned in churches and schools? If yes, what do they say about homosexuality?
9. Do you think that the Homosexuality-Bill, if passed, will contribute to a better society?
10. Do you think that homosexuality is a serious offence or a felony?
11. How serious is it for you? (Chose one)
- as serious as stealing
 - as serious as raping
 - as serious as killing
 - it is not serious at all. It is a natural behavior
12. Must homosexuality be? (Chose one)
- punished
 - recognized in the law
 - just let it be
13. Uganda has recognized human rights and fundamental freedoms. Don't you think that it is not respecting this recognition when it tries to pass the Bill?
14. In your opinion, is a person "born homosexual" or "induced homosexual"?

-Attachment 2

LIST OF PARTICIPANTS

1. He or she did not give his or her name
He or she is a social statistician.
She/he has lived in Uganda for two years.
She/he has also lived in USA

2. His/her name is N.A
She/he did not confess profession
She/he has lived in Uganda all her/his life
She/he has not lived outside Uganda

3. His/her name is M.
She/he did not confess profession
She/he has lived in Uganda all her/his life
She/he has also lived in UK

4. She/he did not give her/his name
She/he is a lawyer
She/he has lived in Uganda for 30 years
She/he has not lived outside Uganda

5. Mukoda Sal'wa Balaba. 22 years old
He is a law student
He has lived in Uganda all his life
He has not lived outside Uganda

6. Kakande Luclay
Social worker
All his life in Uganda
He has never lived outside Uganda

7. Andrew Waiswa
He works with economics and human rights

All his life in Uganda

He lived in Canada for 2 years

8. Nakibuka Noor Musisi. 29 years-old

Lawyer

All his life in Uganda

He had lived in Kenya

9. His/her name is P.O. 27 years-old

She/he did not confess profession

She/he has lived in Uganda all her/his life

She/he has not lived outside Uganda

10. Baligasa Cuba, Charles

Profession: Technician

He has lived in Uganda all his life

He has not lived outside Uganda

11. His name is B.A. 42 years-old

He is a human rights defender

All his life in Uganda

He has not lived outside Uganda

12. Issiko 'Ramadhan. 25 years-old

Social Scientist

All his life in Uganda

He has lived for a short time in South Africa

13. Lipi Mishra

Law Student

He has lived in Uganda for only 2 weeks

He has lived in Canada all his life

14. Samson Kiyanzi

IT-Professional

All his life in Uganda

He has lived in Norway

15. Ivan Mugeere

IT-Professional

All his life in Uganda

He has lived in Norway and Poland

-Attachment 3

Map. Countries where homosexuality is illegal



Africa

- 1 Algeria
- 2 Angola
- 3 Benin
- 4 Botswana
- 5 Burundi
- 6 Cameroon
- 7 Comoros
- 8 Egypt
- 9 Eritrea
- 10 Ethiopia
- 11 Gambia
- 12 Ghana
- 13 Guinea
- 14 Kenya
- 15 Lesotho
- 16 Liberia
- 17 Libya
- 18 Malawi (enforcement of law suspended)
- 19 Mauritania
- 20 Mauritius

21 Morocco

22 Mozambique

23 Namibia

24 Nigeria

25 Sao Tome

26 Senegal

27 Seychelles

28 Sierra Leone

29 Somalia

30 South Sudan

31 Sudan

32 Swaziland

33 Tanzania

34 Togo

35 Tunisia

36 Uganda

37 Zambia

38 Zimbabwe

Asia, including the Middle East

39 Afghanistan

40 Bangladesh

41 Bhutan

42 Brunei

43 India

44 Iran

45 Kuwait

46 Lebanon

47 Malaysia

48 Maldives

49 Myanmar

50 Oman

51 Pakistan

52 Palestine/Gaza Strip

53 Qatar

54 Saudi Arabia

55 Singapore

56 Sri Lanka

57 Syria

58 Turkmenistan

59 United Arab Emirates

60 Uzbekistan

61 Yemen

Two Asian/Middle Eastern countries were listed separately by ILGA under the heading “Legal status of homosexual acts unclear or uncertain”:

-In Iraq, there is no law against homosexual acts, but homophobic violence is unchecked and self-appointed sharia judges reportedly have imposed sentences for homosexual behavior.

-In India, enforcement of the law against homosexual activity had been suspended by court action, but the Supreme Court overturned that ruling on Dec. 11, 2013, so India is back on the main list of countries with anti-homosexuality laws.

Americas

62 Antigua & Barbuda

63 Barbados

64 Belize

65 Dominica

66 Grenada

67 Guyana

68 Jamaica

69 St Kitts & Nevis

70 St Lucia

71 St Vincent & the Grenadines

72 Trinidad & Tobago

Oceania

73 Cook Islands

74 Indonesia (Aceh Province and South Sumatra)

75 Kirbati

76 Nauru

77 Palau

78 Papua New Guinea

79 Samoa

80 Solomon Islands

81 Tonga

82 Tuvalu

Europe

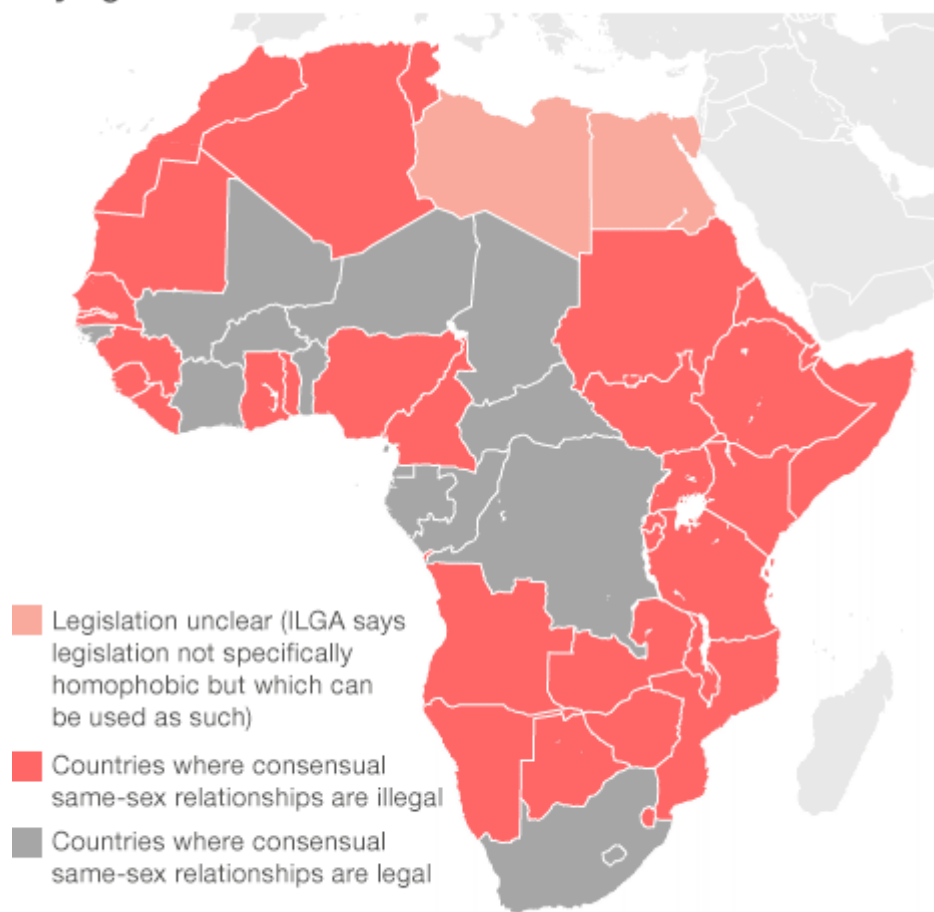
83 Northern Cyprus

(source: <http://76crimes.com/76-countries-where-homosexuality-is-illegal/>)

-Attachment 4

Map. Gay Rights in Africa

Gay rights in Africa



Source: Amnesty / ILGA

(source : <http://www.bbc.co.uk/news/world-africa-23033423>)